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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Charleston County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEWART JEROME MIDDLETON,

APPELLANT

APPELLATE CASE NO 2017-002478

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
State’s Exhibit 6 (DVD of interview with appellant)

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
) October 23-26, 2017
STEWART JEROME MIDDLETON,)
) Charleston, South Carolina
) Defendant.

B E F O R E:

The Honorable J.C. Nicholson, Jr., Judge and a Jury.

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Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

EXAMINATIONS

1 opening charge you wanted to give.

2 THE COURT: Opening statements.

3 MR. EVANS: Thank you, Your Honor. May it
4 please the Court, counsel: Good afternoon, ladies and
5 gentlemen. As you heard before, my name is Andrew Evans.
6 Myself and Jessica Baldwin are assistant solicitors. We
7 represent the State of South Carolina in this case.

8 I do want to thank you for being here this
9 week. I know it's probably not the first thing you
10 wanted to do, get picked for jury duty, but this is an
11 important case. It's important to the State of South
12 Carolina, it's important to the victim, Kayla |. , who
13 is walking in right now. It is also important to
14 Mr. Middleton, so I want to thank you for being here and
15 giving us your time and attention.

16 The defendant, Stewart Middleton, is charged
17 with criminal sexual conduct in the third degree, what we
18 commonly call rape. This incident took place on December
19 14, 2013 up at the Embassy Suites in North Charleston,
20 over by the Convention Center and the Coliseum. Kayla,
21 the victim in this case, was working at a company called
22 SKF in 2013, and she was tasked with planning the office
23 Christmas party that year.

24 So Kayla planned to have the Christmas party
25 at the Embassy Suites in North Charleston, and because

1 she was going to be there all day setting up on the
2 Saturday of the party and because she planned on
3 consuming alcohol that night, she did the responsible
4 thing, and she booked a room at that hotel, Room 403.

5 Unfortunately, Kayla ended up drinking more
6 than she anticipated or intended to that night, and she
7 doesn't remember much of the evening after a certain
8 point, but several of her friends and coworkers do.
9 You're going to hear testimony this week, not only from
10 Kayla, but Yolanda Alston, who was a friend and coworker
11 of hers. Ms. Alston is going to tell you at some point
12 in the evening she thought Kayla was too intoxicated and
13 needed to call it a night and go to her hotel room, so
14 they got a friend named Jimmie Filbeck to take her up to
15 Room 403. He had to put her to bed, and before Jimmie
16 left the room, Kayla said, Let me give you my room key so
17 before you leave for the night, come check on me, make
18 sure I'm okay. Jimmie took her room key and left.

19 A couple hours later, when Jimmie was getting
20 ready to leave, he and his wife decided -- Kayla's room
21 key, I need to check on Kayla and make sure she's okay.
22 So Mr. Filbeck and his wife went upstairs to check on
23 Kayla. They were kind of surprised to see the defendant
24 kind of following them into Kayla's room. They were
25 surprised because, as far as they knew, he didn't have

1 any interaction with her that night, didn't have any
2 reason to go check on her.

3 They all went up to Kayla's room, and Kayla
4 was kind of startled out of bed when they came into the
5 room, and as she did sometimes back then, she was
6 sleeping naked. And that kind of startled Jimmie, so he
7 took her key and put it down and said, Okay. You're all
8 right. I'm going to leave, and made sure he closed door
9 behind him.

10 And he and his wife and the defendant, the
11 three of them get back on the elevator to go downstairs;
12 however, before the elevator doors closed, the defendant
13 jumped off the elevator, and Jimmie thought that was kind
14 of strange, but he wasn't too concerned about it because
15 they had made sure he closed Kayla's door behind him on
16 the way out.

17 You're also going to hear testimony this week
18 from a gentleman named Mitchell Rumsey. Mr. Rumsey was
19 working the front desk that night of the incident. He's
20 going to describe to you how a black male came down to
21 the front desk, claimed he was Kayla's boyfriend, and
22 asked for a copy of the key to his room. They were kind
23 of busy that night, and Mr. Rumsey didn't think too much
24 about it, but, unfortunately, he gave the defendant a
25 copy of Kayla's room key, and then several moments later,

1 Mr. Rumsey found a distraught, upset, intoxicated black
2 female in the service hallway of the hotel, and she was
3 kind of incoherent and upset, but when he was finally
4 able to get something out of her, she said, I've been
5 raped.

6 You're also going to hear testimony this week
7 from Britton Delis. Mr. Delis is a manager at the
8 Embassy Suites. You're going to hear testimony from Joye
9 McElroy, who is a nurse who helped treat Kayla for
10 alcohol intoxication. You're going to hear from
11 Detective Rebecca Bailey who is a police officer at the
12 North Charleston police department who investigated the
13 crime, and you're going to hear testimony from Kathy
14 Gill-Hopple, who is the head of the sexual assault
15 nursing program over at MUSC.

16 You're going to be charged on the law of
17 reasonable doubt at the end of the trial this week, and
18 that is the State's burden of proof in every criminal
19 case. It's maybe a phrase you've heard before, but you
20 maybe don't know what that means. I submit to you that
21 proof beyond a reasonable doubt is simply proof that
22 would leave you firmly convinced of the defendant's
23 guilt, firmly convinced. I'm confident that after you've
24 heard all the testimony this week, you've seen all the
25 evidence in this case, each of you will be firmly

1 convinced the defendant is guilty of criminal sexual
2 conduct of the third degree.

3 Thank you.

4 MR. SMILEY: Thank you, Your Honor. I
5 introduced myself previously when we were doing the voir
6 dire.

7 My name is Jim Smiley. I have the pleasure
8 of representing Mr. Middleton, and Ms. Hensley is my
9 co-counsel. There are a lot of things we can agree on:
10 We agree she had a party. We can agree she rented a
11 room. We can agree she went back to her room when she
12 was feeling dizzy. As the judges of the facts, I would
13 ask you to listen to the alcohol consumption in this case
14 about how much did she have to drink, what was her state
15 of mind at different times? That's going to be for
16 y'all. I'll do my best to bring it out through the
17 witnesses, but y'all will be the judges of the facts
18 where that is concerned.

19 As Mr. Middleton will be able to tell you how
20 the reason he jumped out of the elevator, the reason he
21 went and got a key, the reason he came back up, what
22 happened in the room, how he left, and what happened
23 later. Judge his credibility. Judge his motivations,
24 Judge his bias, of course, and see what's inconsistent.
25 See what's consistent, and I would ask you to do the same

1 thing for Ms. |. .

2 I believe she's married now, Kayla |. , or
3 as I would know her in this case as Kayla |. . Where
4 is she consistent? Where is she inconsistent? What
5 makes sense? What doesn't make sense? When you hear the
6 word, rape, there's different kinds of rape. There's the
7 kind where you're held at gunpoint and assaulted.
8 There's the kind where force is used in a person who is
9 beaten or threatened to be beaten and sex is
10 accomplished.

11 This isn't about that. Just be clear on
12 that. What this case is about was whether Mr. Middleton
13 knew that Ms. |. was mentally incapacitated, mentally
14 deficient, or physically incapacitated to the point that
15 she could not give consent. That's what this is about.

16 Mr. Middleton is married. He committed
17 adultery that night. The evidence will show that.
18 That's not the crime. Having sex with an intoxicated
19 woman is not a crime that we're here to answer. The
20 crime that we're here to answer and maintain our
21 innocence is that Mr. Middleton had sex with a mentally
22 incapacitated, mentally deficient, or physically
23 incapacitated person.

24 I think you're going to see in the evidence
25 he committed adultery, but he certainly didn't commit sex

MITCHELL RUMSEY - DIRECT EXAMINATION

1 with a mentally incapacitated Ms. |. I appreciate
2 you keeping an open mind and listening to all the
3 evidence until the end of trial. At that time that cloak
4 of innocence that we start with will still remain.

5 Thank you.

6 THE COURT: Solicitor, if you'll call your
7 first witness, please.

8 MR. EVANS: Thank you, Your Honor. The State
9 calls Mitchell Rumsey.

10 MITCHELL RUMSEY,

11 having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. EVANS:

15 Q. Where do you currently live?

16 A. I live in Denver, Colorado.

17 Q. And where are you employed?

18 A. I work for the Doubletree Hilton in Denver.

19 Q. Where did you live back in December of 2013?

20 A. I was here in Charleston, South Carolina.

21 Q. And where were you employed back in December 2013?

22 A. At the Embassy Suites in North Charleston.

23 Q. And what was your position in Embassy Suites in
24 December 2013?

25 A. When I was there, I was the guest services

1 manager.

2 Q. So what were some of your duties as a guest
3 services manager?

4 A. Overall, just kind of manage the front office,
5 making schedules, check-in, check out. Most of the time
6 I was the manager on duty as well, in case any of the
7 other departments needed assistance, also luggage,
8 transportation, stuff like that.

9 Q. So just kind of general managerial duties; is that
10 accurate?

11 A. Yes, sir.

12 Q. Do you recall the night of December 14th, 2013?

13 A. Yes.

14 Q. When did you start working that day?

15 A. I worked the p.m. shift, so I get in around 2:30.

16 Q. Do you recall any events taking place at the hotel
17 that evening?

18 A. It was the holiday time, so there were some
19 holiday events scheduled.

20 Q. Do you remember approximately how many people were
21 attending events at the hotel?

22 A. I don't remember the exact amount but it would be
23 a few hundred.

24 Q. There were a few hundred extra, sort of, guests
25 that evening?

MITCHELL RUMSEY - DIRECT EXAMINATION

1 A. Yes.

2 Q. Where in the hotel were you working that specific
3 night?

4 A. Mainly I stay at the front desk, check-in,
5 check-out area of the front entrance.

6 Q. And do you have the ability to create room keys
7 for people when you work the front desk?

8 A. Yes, sir.

9 Q. Did you make any room keys that evening?

10 A. Yes, sir, I did.

11 Q. For who?

12 A. Well, multiple guests, anyone that was checking in
13 that evening or needed another key.

14 Q. Did you make any extra keys for anyone that night?

15 A. I did.

16 Q. For whom?

17 A. There were other people that needed extra keys,
18 and I would assist with that.

19 Q. Specific to this case, though, what was your
20 involvement in this case?

21 A. I gave the gentleman the key in this instance.

22 Q. Okay. Can you describe the gentleman you gave the
23 room key to?

24 A. It was an African American gentleman, maybe a
25 little shorter than myself, six foot or so.

1 Q. What did he tell you when he came to the front
2 desk?

3 A. Really, all I recall is that he needed the room
4 key for his friend, or his girlfriend's room, and then he
5 just confirmed the name and the room number of the room.

6 Q. So he knew the specific room number?

7 A. Yes, sir.

8 Q. And do you recall whether he said friend or
9 girlfriend?

10 A. I don't recall, specifically.

11 MR. EVANS: Beg the Court's indulgence.

12 BY MR. EVANS:

13 Q. Would it refresh your recollection if I showed you
14 a copy of your deposition in this case?

15 A. Sure.

16 MR. EVANS: May I approach the witness,
17 please?

18 THE WITNESS: What am I looking for?

19 BY MR. EVANS:

20 Q. Does it refresh your recollection whether he said
21 friend or girlfriend?

22 MR. SMILEY: Are you using the condensed
23 version? Maybe page 36, line 10.

24 THE WITNESS: Yeah, I mean, I guess that's --
25 I guess it would be his girlfriend versus his friend.

1 BY MR. EVANS:

2 Q. Does that help refresh your recollection?

3 A. Yes, sir.

4 Q. Okay. Thank you. And he knew the room number
5 that this guest was staying in?

6 A. Yes, sir.

7 Q. Did he present an ID to you?

8 A. He did not.

9 Q. Okay. Was there any other guest booked in the
10 room for 403 that night?

11 A. There was not another name on the room, but there
12 were two registered adults.

13 Q. Do you remember what kind of room it was as far as
14 beds?

15 A. I don't recall.

16 Q. Okay. Was the black male who came up to you name
17 on the registration?

18 A. It was not.

19 Q. So what did you do for him?

20 A. I created a room key for him to access the room.

21 Q. Was it unusual for you to make spare room keys?

22 A. Not unusual to make spare keys, no.

23 Q. Okay. And I think we touched on this, but was the
24 hotel fairly busy that night?

25 A. Yes, sir, very busy.

1 Q. Did you see that black gentleman anymore that
2 evening?

3 A. I did not.

4 Q. What time was your shift supposed to end?

5 A. Normally ends around 11 p.m., but I'm a manager.
6 I stay if needed; probably around 11:15, 11:30.

7 Q. Did anything of note happen as you were getting
8 ready to leave for the evening?

9 A. Yes, sir.

10 Q. What was that?

11 A. Once I wrapped up my shift, I was exiting just to
12 go through the employee exit to go to my car and leave,
13 and that's when I found Ms. |.

14 Q. Can you describe her demeanor to the jury.

15 A. Originally, when I first found her, she was kind
16 of crouched down by the service elevator. She was, you
17 know, crying visibly. I could tell -- first of all, she
18 was a guest. She shouldn't have been there, so that was
19 interesting to find that, but she was very distraught.
20 She was kind of crouched over in the fetal position,
21 scared. Something not positive had occurred.

22 Q. Do you recall what she was wearing?

23 A. She was wearing, I believe, a black dress and kind
24 of a skirt dress kind of thing.

25 Q. Did she say anything to you?

MITCHELL RUMSEY - DIRECT EXAMINATION

1 MR. SMILEY: Objection, Your Honor. Hearsay.

2 THE COURT: Overruled.

3 MR. EVANS: Thank you, Your Honor.

4 BY MR. EVANS:

5 Q. I think for purposes of the State's excited
6 utterance?

7 THE COURT: I understand.

8 BY MR. EVANS:

9 Q. Did she say anything to you?

10 A. The first thing she said was she had been raped.

11 Q. What did you do next in response to that?

12 A. I did my best to kind of get her to stand up and
13 walk with me, and I escorted her kind of down the back
14 side hallway where my office is so I could at least put
15 her in a safe place until I could call 911.

16 Q. Was she able to walk on her own easily?

17 A. Easily, no. I was kind of a crutch for her. She
18 kind of leaned on me.

19 Q. What did you do once you got her into the office?

20 A. Once I got her into the office, just kind of sat
21 her down in my chair, got her some water, and that's when
22 I called 911.

23 Q. Was she able to speak to the 911 operator?

24 A. No, sir.

25 MR. EVANS: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. EVANS:

4 Q. Mr. Rumsey, I'm handing you what has been marked
5 for identification purposes as State's Exhibit 1. Do you
6 recognize that?

7 A. Yes, I do.

8 Q. What is that?

9 A. This is a recording of the 911 call I made.

10 Q. Have you listened to that specific disk?

11 A. Yes, sir.

12 Q. And your initials are on it?

13 A. That is correct.

14 Q. Is that a fair and accurate representation of the
15 911 call you made that night?

16 A. Yes, sir.

17 MR. EVANS: At this time I move to admit
18 State's Exhibit 1 into evidence and play it for the jury.

19 THE COURT: Any objection?

20 MR. SMILEY: No objection.

21 THE COURT: State's 1 will be admitted
22 without objection.

23 (State's Exhibit No. 1 was marked for
24 identification and admitted into evidence.)

25 (Whereupon, the CD was played for the jury.)

MITCHELL RUMSEY - CROSS- EXAMINATION

1 BY MR. EVANS:

2 Q. Did the police arrive shortly after that?

3 A. Yes.

4 Q. What did you do after the police arrived?

5 A. There were two officers. One went to my office
6 with Ms. | , and I believe I made a key for another
7 officer to go up to the room.

8 Q. You think you made another room key for 403?

9 A. Yes, sir.

10 Q. What time were you able to end your shift that
11 evening?

12 A. It would have to be after midnight, but probably 4
13 a.m., so it would be within that time frame.

14 Q. Okay. But after you were supposed to have gone
15 anyway?

16 A. Yes, sir.

17 MR. EVANS: Beg the Court's indulgence.

18 Thank you, Mr. Rumsey. I don't have any
19 further questions at this time. Please answer any
20 questions Mr. Smiley may have for you.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MR. SMILEY:

24 Q. Mr. Rumsey, I'm Jim Smiley. I represent Stewart
25 Middleton, all right? So you were the service guest

1 manager there at the hotel that evening?

2 A. Yes, sir.

3 Q. You were sort of in charge of the people that were
4 at work?

5 A. For the most part, yes, sir.

6 Q. You gave a deposition in relation to this case
7 before, correct?

8 A. Correct.

9 Q. In a civil suit, right?

10 A. Correct.

11 Q. Now, describe to the jury -- first of all, tell
12 the jury about what time it was you were heading out.

13 A. When I was leaving the hotel?

14 Q. When you were leaving the hotel.

15 A. It was a little after 11:00, 11:15.

16 Q. Okay. And you found Ms. |. about that time as
17 you were walking out, correct?

18 A. Correct.

19 Q. Now, if you could, describe to the jury that area
20 that you found her in.

21 A. Well, it's an employee area. It's kind of at the
22 back of the house, human resources, housekeeping. It's
23 where the service elevator is for the maintenance staff,
24 housekeeping, go through a couple of double doors to
25 exit. To the left is the service entrance -- or the

1 service elevator, excuse me. To the right is the
2 kitchen, and where I found Ms. |. was to the left part
3 of the landing of the service elevator.

4 Q. And this would have been on the first floor?

5 A. Ground floor, yes, sir.

6 Q. And that area is a good distance from the guest
7 elevators?

8 A. I would say it's a fair distance, yes.

9 Q. You would have to come out of the guest area and
10 go across the lobby to get to that area?

11 A. From elevator to elevator, yes.

12 Q. Let me ask you this: Maybe I just assume
13 something. The service elevator, do guests use the
14 service elevator?

15 A. No. Very rare cases, with VIPs, things like that,
16 but --

17 Q. Ordinarily they don't service the guests?

18 A. Correct.

19 Q. So to get there from the first floor when you get
20 off the guest elevators, you would have to cross a good
21 part of the restaurant/lobby area to get to those double
22 doors, right?

23 A. Correct.

24 Q. And then you have to go through not just one set
25 of double doors, but another set of double doors to get

1 back in that area, correct?

2 A. Just one set of double doors.

3 Q. Just one set? All right. And that's also the
4 path that employees take in and out of the hotel to go to
5 their cars?

6 A. Correct. The employee exit's there. That's where
7 we park, clock in and clock out.

8 Q. The second floor of your hotel has a breezeway, or
9 skywalk, correct?

10 A. Correct.

11 Q. And that skywalk, you come off the guest elevators
12 and walk through a set of doors and you're there, right?

13 A. Correct.

14 Q. It's a direct line?

15 A. Yes. Hang a left off the elevator. It's a
16 straight shot.

17 Q. And you go across that sky walk to get to the
18 different meeting rooms, correct?

19 A. Correct, maybe a couple hotels, small ones, that
20 are connected to the Convention Center.

21 Q. And for the people who were there celebrating the
22 parties, they would be renting those spaces over across
23 the skywalk, correct?

24 A. Correct.

25 Q. Now, since I have you here all the way from

MITCHELL RUMSEY - CROSS- EXAMINATION

1 Colorado, I'm going to ask you a bunch of questions about
2 the hotel. The elevator itself has glass on one side,
3 right, guest elevator?

4 A. Yes.

5 Q. And the guest elevators are half wood, and then
6 the back part of it is glass, correct?

7 A. Correct.

8 Q. So if you're in the back part of the elevator, you
9 can see down into the lobby and to the balconies, for
10 lack of a better word, that go to each room. That's not
11 the right word, but maybe you have a better word.

12 A. Correct. There's glass on the back of each
13 elevator. You could really be in the elevator on the
14 ninth floor and see all the way down. They call it the
15 atrium. I don't know if balcony is considered the right
16 word. It's not a private balcony.

17 Q. I'm going to do it in real layman's terms:
18 There's a walkway around the atrium that has rooms coming
19 out of it?

20 A. Correct.

21 Q. When you're standing in the back of the elevator,
22 where the glass is, if you look to the right, you can see
23 Room 403 when you're on the fourth floor?

24 A. I don't know. If you're standing on the elevator,
25 you can see it. It would be three doors down.

1 Q. It's close to the elevator?

2 A. Correct.

3 MR. SMILEY: Beg the Court's indulgence.
4 Could I get this marked as Defendant's Exhibit No. 1.
5 (Defendant's Exhibit 1 was marked for
6 identification.)

7 BY MR. SMILEY:

8 Q. If I showed you this picture from the elevator,
9 see if you recognize it. Is that what you would see
10 looking out, if it was directly on the first floor
11 looking out? And I know it's difficult.

12 A. So this would -- there's three elevators, and this
13 would have been taken if it was to the right. I think
14 that would be the only way.

15 Q. And if you were in the back of that elevator where
16 the glass is and you looked to the right, you could see
17 Room 403?

18 A. It appears so.

19 MR. SMILEY: I would move this into evidence
20 as Defendant's No. 1, Your Honor.

21 THE COURT: Any objection?

22 MR. EVANS: No, sir.

23 THE COURT: All right. Defendant's Exhibit 1
24 admitted without objection.

25 (Defendant's Exhibit 1 admitted into

1 evidence.)

2 BY MR. SMILEY:

3 Q. Now, your hotel has, what, seven floors? You were
4 there a pretty good while.

5 A. I believe it had nine.

6 Q. You had like 250 rooms?

7 A. I believe 255.

8 Q. I was close. And they have the electronic keys,
9 right?

10 A. Correct.

11 Q. And you make those at the front desk?

12 A. Yes, sir.

13 Q. And are you familiar with the key log?

14 A. Somewhat familiar. I wouldn't say I'm an expert.

15 MR. SMILEY: Beg the Court's indulgence.

16 BY MR. SMILEY:

17 Q. Do you remember approximately what time the
18 gentleman came up asking for the key?

19 A. I really don't recall.

20 Q. Let me ask you this way: If I showed you a
21 printout of the key lock, would you be able to determine
22 when you made the key?

23 A. I should be able to.

24 MR. SMILEY: I'm going to have this marked as
25 Defendant's No. 2. It's two pages, Your Honor.

1 (Defendant's Exhibit 2 was marked for
2 identification.)

3 BY MR. SMILEY:

4 Q. I'm going to show you a two-page printout and see
5 if you recognize it.

6 A. I do recognize it.

7 Q. Is that a printout of a key log for Room 403 on
8 December 14th, 2013 and the morning and next day of the
9 14th -- 15th?

10 A. Yes, sir.

11 Q. During that -- moving to the evening part, is it
12 true you gave out this key in the evening?

13 A. Yes, sir. It was the evening.

14 Q. And it was an additional key, right?

15 A. Yes, sir.

16 Q. And if you look at that log, you can see, upon
17 check-in -- and I think that's on the second page --
18 there were two keys initially issued, right?

19 A. Correct.

20 Q. And that would be key 188 and key 189, correct?

21 A. Correct.

22 Q. And then somewhere later that evening a third key
23 was issued, right?

24 A. Correct.

25 Q. And that appears to be the key you issued to this

1 gentleman, correct?

2 A. Correct.

3 Q. And at what time was that?

4 A. It looked like that was 10:25.

5 Q. All right. So 10:25 that night, key 189 was
6 issued -- excuse me, 190. I apologize.

7 A. Correct.

8 Q. 190, and that was the third key that was issued,
9 correct?

10 A. Right.

11 Q. And if I believe or understand your testimony
12 correctly, this fellow came up and said that he needed to
13 get a key for, what you remember, his girlfriend; that
14 she was locked out, correct?

15 A. I don't know about the locked out part, but I
16 don't recall that.

17 Q. Let me ask it this way: Did you call up to the
18 room to see if there was anybody in the room before
19 issuing the key?

20 A. I don't remember calling.

21 Q. You just recall issuing another key, correct?

22 A. Correct.

23 Q. All right. Now, when you found Ms. | , she was
24 conscious, right?

25 A. Yes.

1 Q. Her first words to you is she had been raped?

2 A. Correct.

3 Q. She could walk, but you steadied her, correct?

4 A. Correct.

5 Q. You said she was belligerent.

6 A. I did. I wouldn't -- that's probably a bad choice
7 of words, but I did say that, yes.

8 Q. You said she was intoxicated.

9 A. She definitely was not sober, but yes, I did say
10 she was intoxicated.

11 Q. You couldn't tell what level, but you knew she was
12 intoxicated.

13 A. Yes, sir.

14 Q. All right. She was communicating in some fashion
15 with you?

16 A. A little bit, yes.

17 Q. Now, you called 911, and when you're on the phone
18 with 911, they want you to put her on the phone, right?

19 A. Yes.

20 Q. And she didn't want to get on the phone, did she?

21 A. No, sir.

22 Q. So you ended up asking her questions, correct?

23 A. Yes, sir.

24 Q. Were you present when the officer spoke with her?

25 A. Actually, I was not.

MITCHELL RUMSEY - CROSS- EXAMINATION

1 Q. So he, the first reporting officer, arrived, got
2 another key, and you can see on that -- matter of fact,
3 if you look at that key log, after key 190 was issued,
4 the next key that was issued, most likely, was to the
5 officer, correct?

6 A. Correct.

7 Q. And what time was that key issued?

8 A. It looks like 11:52.

9 Q. 11:52. And police got there fairly quickly after
10 you called 911?

11 A. Yes, sir.

12 Q. Okay. So when you said that you got her about
13 11:00, 11:15, could it have been closer to quarter to
14 12:00, somewhere in there?

15 A. I wouldn't say it was all the way close to
16 midnight. I would say 15, 30 minutes.

17 Q. And the reason I ask that, you didn't have a half
18 hour's worth of conversation with Ms. | before the
19 policeman arrives, did you?

20 A. No, sir.

21 Q. And I know this has been over four years ago. Did
22 it seem like a long time?

23 A. It didn't seem like a long time.

24 Q. And then the officer arrived, and one officer goes
25 to speak with her?

1 A. Correct.

2 Q. And there was two of them?

3 A. There were two officers, and I believe one went
4 with her.

5 Q. And that officer got his key at 1152 to go
6 upstairs, correct?

7 A. Correct.

8 Q. All right. Now, were you -- did you have any more
9 contact with Ms. |. once that officer arrived?

10 A. No, I did not.

11 Q. I was getting a little bit more about the layout.
12 The second floor is where you go to get to the skywalk,
13 correct?

14 A. Correct.

15 Q. So the third and fourth floor, all up to nine,
16 they don't have any of those alleys off of it. It's just
17 rooms, correct?

18 A. Correct.

19 Q. And they all face out into the atrium, right?

20 A. That's correct.

21 Q. So if you walk out of your room and you're
22 standing there, you can be seen by people either on that
23 floor or a couple floors down, if you got to the edge,
24 you could be seen all the way down to the lobby because
25 it's a tall atrium, correct?

MITCHELL RUMSEY - CROSS- EXAMINATION

1 A. It's an open space, yes, sir.

2 Q. You never went up to her room, did you?

3 A. I did not.

4 Q. You said that Ms. |. was dressed in a black and
5 silver dress. Did she have shoes on?

6 A. I don't think she did, actually.

7 Q. So she was barefoot?

8 A. Correct.

9 Q. All right. Was she crying?

10 A. I would say so.

11 Q. Okay. She didn't report any injuries?

12 A. Not to me, no, sir.

13 Q. And she spoke to you? Y'all had a conversation?

14 A. I wouldn't say it was a full-on conversation. It
15 was difficult for her to put words together and form a
16 conversation.

17 Q. Let me ask you this: When you asked her a
18 question, she answered it?

19 A. I would say so, yes.

20 Q. And if she asked you a question, you answered.

21 A. Yes.

22 Q. On a scale of one to ten, ten being unconscious,
23 one being dead sober, what would you put her level of
24 intoxication, your layman's experience of looking at
25 people that are intoxicated?

1 A. I would say, like, seven.

2 Q. Okay.

3 MR. SMILEY: Nothing further, Your Honor.

4 THE COURT: Any redirect?

5 MR. EVANS: Yes, sir, briefly.

6 REDIRECT EXAMINATION

7 BY MR. EVANS:

8 Q. Mr. Rumsey, is it possible for guests to kind of
9 accidentally end up on the service elevator?

10 A. It's possible, yes.

11 Q. So they could have end -- someone could end up in
12 the service hallway without walking across the lobby or
13 anything like that?

14 A. It's possible, yes, sir.

15 Q. Did you get any complaints that night -- let's
16 back up.

17 You could see the front doors of the rooms.
18 You said it's an open atrium, correct?

19 A. Correct.

20 Q. Did you get any complaints about anybody looking
21 out of that room?

22 A. Not that I recall.

23 Q. We also talked about the elevator. I guess all
24 three elevators had the same sort of design, correct?

25 A. Correct.

1 Q. You said the back half is glass. What is the
2 front half of the elevator?

3 A. I don't recall. Only the back half is glass. I
4 don't know if you can see.

5 Q. So if you're standing toward the front, can you
6 see to the left of you?

7 A. If you're standing closest to the door, you should
8 be able to see outside.

9 Q. And just to clarify what Mr. Smiley was asking
10 you, the guy that came down and got the room key from
11 you, you said you don't recall him saying anybody was
12 locked out of the room, correct?

13 A. Correct.

14 Q. And you also said in your cross-examination that
15 belligerent was probably not a good choice of words. How
16 would you describe Ms. [REDACTED]'s demeanor? You wanted to
17 clarify that, I think.

18 A. Well, she wasn't -- I don't think belligerent was
19 the right word. She wasn't yelling. She wasn't very
20 hyped up. She was visibly shaken {sic}. She was kind
21 of state of shock, really. You could tell something
22 happened. I didn't know what until she said what, but
23 she was crying. Just kind of really shaken {sic}. I
24 really don't know of a better way to put it.

25 MR. EVANS: Court's indulgence. I don't have

1 anything further.

2 THE COURT: Any recross?

3 RECROSS-EXAMINATION

4 BY MR. SMILEY:

5 Q. When asked to describe her at a deposition under
6 oath in the past, you used the word belligerent, correct?

7 A. I believe so.

8 MR. SMILEY: All right. Thank you.

9 THE COURT: You may step down. Thank you
10 very much. Next witness.

11 MR. EVANS: Your Honor, may I approach?

12 THE COURT: Yes, sir. Mr. Foreman, ladies
13 and gentlemen: What we're going to do is take a short
14 break at this time, may have a smoke. They'll take you
15 to the appropriate place to smoke. Please don't discuss
16 the case among yourselves, and we'll come back to 15 or
17 20 minutes.

18 MR. EVANS: Can we excuse Mr. Rumsey from his
19 subpoena --

20 THE COURT: If you'll just hang on a second.
21 All right. We'll take about a 15-minute
22 break.

23 (Recess taken.)

24 (In open court, jury present.)

25 THE COURT: State, call your next witness,

KAYLA |. - DIRECT EXAMINATION

1 please.

2 MR. EVANS: Thank you, Your Honor. State
3 calls Kayla |. .

4 KAYLA |. ,

5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. EVANS:

9 Q. Good afternoon, Kayla. How are you doing? How
10 are you feeling this afternoon?

11 A. I'm okay.

12 Q. What is your maiden name?

13 A. [REDACTED]

14 Q. Where are you from originally?

15 A. The Moncks Corner area of South Carolina.

16 Q. And where do you live now?

17 A. In Goose Creek.

18 Q. You were in the Air Force at one point?

19 A. I was.

20 Q. You were discharged from the Air Force for a check
21 bouncing incident?

22 A. I was.

23 Q. What do you do for a living?

24 A. I'm a track coach.

25 Q. What kind of track?

1 A. Youth, ages five through 18.

2 Q. What were you doing for a living back in December
3 2013?

4 A. I was a supply chain planner at SKF Aerial
5 Engineering.

6 Q. What kind of company is SKF?

7 A. It's a bearing manufacturing company.

8 Q. Ball bearings?

9 A. Yes.

10 Q. And you kind of mentioned your position there.
11 What specifically did you do?

12 A. I did all the planning for the company as far as
13 the production.

14 Q. I'm going to bring your attention to the date of
15 December 14th, 2013. What were you doing earlier that
16 day?

17 A. I was hosting our annual company's Christmas
18 party.

19 Q. Where was that party going to be held?

20 A. Embassy Suites.

21 Q. Which Embassy Suites, do you remember?

22 A. In Charleston.

23 Q. Do you recall specifically where it was?

24 A. The one across from Tanger Outlet.

25 Q. Were you planning on staying that night as well?

KAYLA | - DIRECT EXAMINATION

1 A. I was.

2 Q. How come?

3 A. I was hosting the party so I knew I would be
4 drinking that night.

5 Q. Were you planning on having anyone stay with you
6 that night?

7 A. I was.

8 Q. Who was that?

9 A. My friend, Labelia Nelson.

10 Q. Did Labelia work with you?

11 A. She did not.

12 Q. But she was going to hang out and party?

13 A. Correct.

14 Q. Did Labelia ever come back and hang out that
15 night?

16 A. She did not.

17 Q. So when you made the reservation, that was for two
18 people?

19 A. Correct.

20 Q. That was for Labelia?

21 A. Correct.

22 Q. How many beds were in the room?

23 A. One that I remember.

24 Q. But you had anticipated Labelia would come and
25 stay with you?

1 A. It was if she decided to drink while she was there
2 as well, we came separately, she would have a place to
3 stay.

4 Q. Did you ask anybody else to stay with you that
5 night?

6 A. No.

7 Q. Do you remember about what time you got to the
8 hotel that day?

9 A. It was around 1 p.m.

10 Q. What did you do when you got to the hotel?

11 A. Once I checked into my room, I went back out
12 across the street to the Tanger Outlet.

13 Q. What did you do at Tanger Outlet?

14 A. I picked up some things that I forgot at home, and
15 I also ate dinner at Jim & Nick's.

16 Q. Do you remember what time you ate?

17 A. I think this was around 3:00 or 4:00.

18 Q. Early dinner?

19 A. Yes.

20 Q. Do you remember what you ate?

21 A. I think the barbecue platter.

22 Q. Where did you go after you ate and ran some
23 errands at Tanger?

24 A. After that, I went back to my hotel room.

25 Q. Did you have any alcohol to drink prior to the

KAYLA | - DIRECT EXAMINATION

1 party?

2 A. I did.

3 Q. What were you drinking?

4 A. Peach Ciroq and Sprite.

5 Q. What is Ciroq?

6 A. It's vodka.

7 Q. It was a liquor?

8 A. Correct.

9 Q. Do you remember how much you had to drink before
10 the party?

11 A. Before the party -- at that time, it was two of
12 the small plastic cups that come in the hotel room, half
13 Sprite and half Ciroq.

14 Q. And about how long before the party was that, that
15 you started drinking?

16 A. Maybe about an hour.

17 Q. Were you a big drinker back then?

18 A. No.

19 Q. And I don't want to embarrass you, but you're not
20 a large woman. How much do you weigh?

21 A. 115.

22 Q. How tall are you?

23 A. Five-four.

24 Q. Your track background, do you have a cross country
25 background?

1 A. Not cross country. I was a sprinter.

2 Q. Did anyone come to visit you in the room prior to
3 the party, prior to the party starting?

4 A. Prior to the party, Yolanda Alston.

5 Q. Who is Yolanda?

6 A. A friend and coworker.

7 Q. Do you remember if you had anything to drink?

8 A. I did. I had another cup of Ciroq and Sprite.

9 Q. You said it was basically half vodka, half Sprite?

10 A. Correct.

11 Q. And at some point, did you go down to the party?

12 A. We did together.

13 Q. You and Yolanda?

14 A. Correct.

15 Q. Where was the party being held?

16 A. In their ballroom, I think. It was on the second
17 floor.

18 Q. So a couple floors below you.

19 A. Yes.

20 Q. How many people were at the party initially?

21 A. When we got there -- I think we were expecting 75,
22 and when we got there, it was about half of that, maybe
23 30, 40.

24 Q. Do you know the defendant, Jerome Middleton?

25 A. Yes.

KAYLA | - DIRECT EXAMINATION

1 Q. How did you know him?

2 A. We worked together as coworkers.

3 Q. How well did you know him?

4 A. Just professionally.

5 Q. Did y'all hang out outside of work?

6 A. Never.

7 Q. Was he at the party when you got there?

8 A. No.

9 Q. Do you remember how you were feeling at the party?

10 A. Like, the alcohol started, like, I guess, hitting
11 me at once, and I was really intoxicated as well as sick,
12 and that was pretty much it. That's when I decided it
13 was time for me to leave.

14 Q. So you were feeling drunk. You said you were also
15 feeling sick?

16 A. Correct.

17 Q. Just kind of like --

18 A. Nauseated, dizzy.

19 Q. So about how long do you think you stayed at the
20 party?

21 A. Maybe an hour and a half.

22 Q. And when you decided to leave, did somebody take
23 you back to your room?

24 A. Yes.

25 Q. Who was that?

1 A. Jimmie Filbeck.

2 Q. Who is Mr. Filbeck?

3 A. He's also a friend, coworker.

4 Q. He's another guy from SKF?

5 A. Yes.

6 Q. Was that the last time you were supposed to see
7 Jimmie that night?

8 A. No.

9 Q. Tell me about that.

10 A. Once we got to the room -- again, I wasn't feeling
11 well, not being much of a drinker. I asked him and his
12 wife to come back and check on me when they were leaving
13 the party, just to make sure I was okay.

14 Q. Did you give Mr. Filbeck anything before you left?

15 A. I did. I gave him a room key.

16 Q. So he could get back into the room?

17 A. Correct.

18 Q. Do you remember what you were wearing when you
19 went to bed?

20 A. I know had on my bra and underwear.

21 Q. Okay. Was it -- did you ever sleep in the nude
22 back then any time?

23 A. Yes.

24 Q. So it wouldn't have been unusual for you to sleep
25 naked?

KAYLA |. - DIRECT EXAMINATION

1 A. No.

2 Q. What's the next thing you remember?

3 A. I remember Jimmie and his wife coming in the
4 courtroom, startled, kind of jumped up and I remember him
5 saying, We just came to check on you and that was it.

6 Q. That's the last thing? Did you see anyone else
7 with them?

8 A. Just his wife.

9 Q. You said that's the last thing you kind of
10 remember happening?

11 A. Yes.

12 Q. Had you had any interaction with the defendant
13 that night, that you recall?

14 A. No.

15 Q. Had you consented to any sexual intercourse with
16 anybody?

17 A. No.

18 Q. Did you feel you were in a state of mind to
19 consent to sexual intercourse?

20 A. No, sir.

21 Q. What is the next thing you remember after Jimmie
22 coming into your room and leaving?

23 A. Waking up in the hospital at Roper St. Francis.

24 Q. Okay. Do you remember what time you left the
25 house?

1 A. I think I left at 9:30, 10:00.

2 Q. Were you there a couple hours?

3 A. I'm not sure when I got there. I woke up in the
4 hospital. I just know approximately what time I left.

5 Q. So you don't even remember going to the hospital?

6 A. No.

7 Q. Okay. Did you call anybody from the hospital?

8 A. I did.

9 Q. Who?

10 A. Deputy Green.

11 Q. And how did you know Deputy Green?

12 A. He's a friend.

13 Q. Why did you call him?

14 A. The nurses -- once I woke up, the nurses told me
15 that I was there because I had gotten raped. Again, I
16 didn't know what was going on. With me having a friend
17 that was an officer of the law, I just felt like he was
18 the person to call with, you know, that type of
19 suspicion.

20 Q. Were you entirely sure what had happened to you?

21 A. No, sir, not at that point.

22 Q. Okay. What was kind of your priority when you
23 were at the hospital, I mean your top priority?

24 A. When I woke up?

25 Q. Yeah.

KAYLA | - DIRECT EXAMINATION

1 A. Pretty much just getting out of there and, like,
2 trying to find out what happened.

3 Q. So you just kind of wanted to get out of the
4 hospital?

5 A. Correct.

6 Q. And did you meet with Deputy Green that day?

7 A. Yes. He picked me up from the hospital.

8 Q. So he gave you a ride to the hospital?

9 A. Correct.

10 Q. Did you speak to anyone else that day?

11 A. I did.

12 Q. Who did you speak with?

13 A. Jimmie, Yolanda, and the defendant.

14 Q. In response to what Mr. Filbeck told you, what did
15 you do?

16 A. I asked him for the defendant's number. Once he
17 gave me that, I proceeded to call.

18 Q. So you didn't even have the defendant's phone
19 number?

20 A. I did not.

21 Q. When you called the defendant, what did he say?

22 A. The first phone call he was just being -- I don't
23 remember his exact wording, but he just said yeah, he was
24 around. He was, like, just really being short, like
25 nothing happened, like that was it, and then he got off

1 the phone.

2 Q. So it was a brief conversation?

3 A. It was a very brief conversation.

4 Q. Did you hear from him at any point that day?

5 A. I did.

6 Q. What did he say then?

7 A. When he called back, he told me he wasn't able to
8 talk. The first time I called, he was around some
9 people, and he proceeded to tell me what happened. He
10 told me I was drunk.

11 He kept going back and forth with what
12 happened. I was ready to get off the phone, and he made
13 the statement, You really don't remember, do you?

14 And I told him, No. Like, tell me, stop
15 playing, you know, with me. Just tell me what happened,
16 and he said yes. You know, we had sex.

17 BY MR. EVANS:

18 Q. And you didn't remember any of that?

19 A. No.

20 Q. How did hearing that make you feel?

21 MR. SMILEY: Objection, Your Honor.

22 THE COURT: What is your legal objection?

23 MR. SMILEY: Relevance.

24 THE COURT: I'll sustain the objection.

25 MR. EVANS: I asked her how it made her feel

KAYLA | - DIRECT EXAMINATION

1 to hear it.

2 THE COURT: I'll sustain the objection.

3 MR. EVANS: I'll move on, Judge.

4 BY MR. EVANS:

5 Q. Did you have any other contact with the defendant
6 that Sunday? This would have been the next day, correct?

7 A. Yes.

8 Q. Did you have any other contact with the defendant
9 that Sunday?

10 A. Yes.

11 Q. In what format, do you remember?

12 A. Text message.

13 MR. EVANS: Beg the Court's indulgence. May
14 I approach the witness?

15 THE COURT: Yes, sir.

16 BY MR. EVANS:

17 Q. I'll show you what we have marked as State's
18 Exhibit 7. Do you recognize that document?

19 A. I do.

20 Q. What is that?

21 A. This is the text message that was sent from me to
22 him and his response.

23 Q. Okay. And do you remember how that was preserved?

24 A. As far as --

25 Q. Did you give that to the police department, a

1 screen shot of it?

2 A. I did.

3 Q. Is that a fair and accurate representation of the
4 text message contact between you and the defendant the
5 day after the incident?

6 A. Yes.

7 MR. EVANS: At this time, I move to admit
8 State's Exhibit 7 and publish to the jury.

9 THE COURT: Any objection?

10 MR. SMILEY: No objection.

11 THE COURT: All right. Exhibit 7 is admitted
12 without objection.

13 (State's Exhibit 7 was marked for
14 identification and admitted into evidence.)

15 BY MR. EVANS:

16 Q. So, Kayla, this would have been from the day after
17 the incident, correct?

18 A. Correct.

19 Q. And who is saying that?

20 A. That's me.

21 Q. Texting to him?

22 A. Correct.

23 Q. And what does he respond to you?

24 A. He said -- you want me to read it?

25 Q. Yes, please.

KAYLA | - DIRECT EXAMINATION

1 A. I'm so sorry. I guess you was drunk. I was
2 drunk, and it should have never happened.

3 Q. And then how did you respond?

4 A. I asked did he use a condom.

5 Q. And what was his response to that?

6 A. It's cut off. I can't see it. He responded yeah.

7 Q. When did you go back to work after that?

8 A. That following Monday.

9 Q. Did you see the defendant at work that day?

10 A. That day.

11 Q. Was that unusual?

12 A. It was.

13 Q. In what way?

14 A. Not unusual to see him at work, but I was kind of
15 staying away. He came into our front office, which there
16 is no reason for him to.

17 Q. So he didn't work in the front office?

18 A. No.

19 Q. So it was unusual for him to come to that part of
20 the building?

21 A. Right. He came in and made eye contact with me
22 and then kind of left out.

23 Q. Did you tell anyone at work what happened?

24 A. I did.

25 Q. What did you do after you told people at work

1 about it?

2 A. My general manager, my boss and the HR manager at
3 the time, they told me I --

4 MR. SMILEY: Objection, Your Honor. Hearsay.

5 BY MR. EVANS:

6 Q. In response to that, what did you do?

7 A. I filed the charges.

8 Q. You and the police department?

9 A. Correct.

10 Q. Was that the same day?

11 A. Correct.

12 Q. After you went to the police department, did you
13 go anywhere else?

14 A. After the police department, the detective, he
15 took me to my home to get my -- the things I had on that
16 night, and from there we went to MUSC.

17 Q. What did you do at MUSC?

18 A. A rape kit was performed.

19 Q. Ms. |. , at some point were you the plaintiff in
20 a lawsuit because of this incident?

21 A. Yes.

22 Q. Who did you file a lawsuit against?

23 A. SKF Aerial Engineering as well as Embassy Suites.

24 Q. Why did you file the lawsuit against SKF?

25 A. After -- I was told that after charges were

KAYLA |. - DIRECT EXAMINATION

1 brought against him, he would be terminated from his
2 position. Once the charges were brought, they did not
3 follow through with what they said they were going to do,
4 which resulted in me quitting the same day.

5 Q. So how long did you work at SKF after the
6 incident?

7 A. I believe about a month and a half until he was
8 charged.

9 Q. Was he still working there the whole time?

10 A. He was.

11 Q. Ms. |., in summation, did you consent to sexual
12 intercourse with the defendant at the time of the
13 incident?

14 A. I did not.

15 Q. How do you know that?

16 A. I did not know him outside of a professional
17 atmosphere. I did not.

18 Q. Okay. And you think you were in a right state of
19 mind to consent?

20 MR. SMILEY: Objection, Your Honor.

21 THE COURT: I'll sustain the objection.

22 MR. EVANS: May I have one more question,

23 Ms. |. ? The gentleman who said he had sexual
24 intercourse with you who was your coworker, do you see
25 him in the room?

1 A. I do.

2 Q. Could you point him out?

3 A. (Indicating.)

4 Q. Could you say what he's wearing?

5 A. Navy blue jacket and khaki pants.

6 MR. EVANS: Let the record reflect the
7 defendant was identified.

8 Beg the Court's indulgence.

9 Thank you, Ms. |. I don't have any
10 further questions for you at this time.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. SMILEY:

14 Q. Mr. |, my name is Jim Smiley I represent
15 Stewart Middleton, and if I call you Ms. |, it's just
16 the way I know this case. I understand you've been
17 married since this incident, so if I get that wrong, I
18 don't mean any disrespect.

19 A. I understand.

20 Q. Let's start with -- you had been adjudicated for
21 lying, correct?

22 A. Can you explain that what you mean?

23 Q. You were separated from the Air Force for fraud,
24 correct?

25 A. Correct.

1 Q. Okay. You were actually sentenced to barracks
2 confinement and then given a bad conduct discharge,
3 correct?

4 A. Correct.

5 Q. And your codefendant in that, he --

6 MR. EVANS: Your Honor, I object.

7 THE COURT: I'll sustain the objection on
8 codefendant.

9 MR. SMILEY: Absolutely.

10 BY MR. SMILEY:

11 Q. And before you were in the Air Force, you were at
12 West Point?

13 A. Correct.

14 Q. So you got an appointment out of high school to go
15 to West Point?

16 A. Yes.

17 Q. And you lasted there about a year?

18 A. Correct.

19 Q. How long had you been working at SKF?

20 A. About three and a half years at the time.

21 Q. And the whole time that you were working there,
22 Stewart Middleton had been working there, correct?

23 A. Correct.

24 Q. And you would see him on the floor from time to
25 time?

1 A. Correct.

2 Q. And y'all were friendly? Y'all said hello to each
3 other?

4 A. Correct.

5 Q. You would give him a hug from time to time?

6 A. Incorrect.

7 Q. No? You didn't call him Johnson and Johnson?

8 A. No. People I worked with used to call him Johnson
9 and Johnson because he wore baby powder. I never called
10 him Johnson and Johnson.

11 Q. You were excited about this event, you were
12 planning it, correct?

13 A. Correct.

14 Q. And you and one other lady there at SKF, y'all
15 were in charge of it?

16 A. Two others.

17 Q. Two others, and that's one of the reasons you got
18 there early that day, correct?

19 A. Yes, one of the reasons.

20 Q. What was the other reason?

21 A. I had a room there that I paid for so I wanted to
22 be there.

23 Q. Got checked in as soon as you could? Got you.
24 When you were at Tanger Outlet, is that when you
25 purchased the vodka?

1 A. No. I had brought it before.

2 Q. So you had gone to the liquor store and bought the
3 vodka before?

4 A. Correct.

5 Q. And I believe it was the medium sized, a liter?

6 A. I believe so.

7 Q. So you bought your clothes for the night, you
8 changed, your luggage up, your liquor up, stuff you were
9 going to need, and then you went to Tanger, correct?

10 A. Correct.

11 Q. All right. At that point in time you hadn't had
12 anything to drink?

13 A. No, not at all.

14 Q. You got back from Tanger at about what time,
15 approximately?

16 A. It was around -- I would say 4:24, 25.

17 Q. When you got back from Tanger, you made yourself a
18 drink?

19 A. Not immediately.

20 Q. You got dressed?

21 A. The last photo, I think 30 minutes later to an
22 hour, that's when I poured the drinks and then got in the
23 shower, got out of the shower, had another drink.

24 Q. And you said you used the plastic cups from -- is
25 this the size cup we're talking about, something like you

1 find in a standard -- or is it bigger (indicating)?

2 A. No, it's a little bit bigger.

3 Q. But it wasn't, like, a Solo cup. It was more like
4 a drinking cup?

5 A. Correct.

6 Q. And you said you were mixing it with Sprite?

7 A. Correct.

8 Q. So you had one drink that was about half vodka and
9 half Sprite, somewhere around 5:00-ish that afternoon.
10 Fair to say?

11 A. I don't remember the exact time.

12 Q. I'm asking you if it was 5:00-ish.

13 A. Yes, I would say 5:00-ish.

14 Q. Took a shower, had another one when you got out,
15 correct?

16 A. Yes.

17 Q. And you were up there getting ready by yourself,
18 correct?

19 A. Correct.

20 Q. What time did you go to the party?

21 A. I don't remember the exact time. I think it was
22 around 7:00.

23 Q. Okay. So you were up in your room at 7:00 and
24 came down by yourself?

25 A. No. Yolanda and I went to the party together.

1 Q. So she had come up to your room?

2 A. Correct.

3 Q. Y'all went to the party, and did y'all come back
4 to the room together?

5 A. No.

6 Q. Beg the Court's indulgence.

7 When you and Yolanda were in the room, you
8 had a drink together?

9 A. I don't remember if she did.

10 Q. So at this point in time, you had three drinks,
11 correct?

12 A. Correct.

13 Q. And then you and Yolanda go down to the ballroom,
14 right?

15 A. Yes.

16 Q. And to do that, you exit the door, get in the
17 elevator, go down to the second floor, and go through
18 that skywalk, correct?

19 A. Right.

20 Q. At the party did you have anything to drink?

21 A. I did not.

22 Q. You didn't take your cup with you?

23 A. No.

24 Q. When you left to go to the party, were you feeling
25 okay?

1 A. I was.

2 Q. And you said you were at the party for about an
3 hour, hour and a half?

4 A. Correct.

5 Q. You didn't have anything to drink at that time?

6 A. Not alcoholic.

7 Q. Okay. But after about an hour, hour and a half,
8 you said you started feeling nauseous?

9 A. Yes.

10 Q. Like something didn't agree with you?

11 A. It felt like I had too much to drink in my room.

12 Q. Okay. So those three drinks.

13 A. Yes.

14 Q. Okay. And so Jimmie Filbeck offered to walk you
15 back to your room?

16 A. Correct.

17 Q. So y'all walk back to your room and get there.

18 You go in your room, get situated on your bed, and then
19 you ask him to come back and check on you?

20 A. Correct.

21 Q. So when he left your room, you were on your bed?

22 A. I don't remember if I was on the bed or if I got
23 undressed first and got in bed, but I was sleeping when
24 they came back to check on me.

25 Q. I guess my question was, you didn't get undressed

1 while Mr. Filbeck was in the room?

2 A. No.

3 Q. So you took Mr. Filbeck to the room, you went in,
4 got settled, asked him to check on you, right?

5 A. Correct.

6 Q. And you gave him a key and got settled, correct?

7 A. Correct.

8 Q. Now, the party wasn't over when you left, was it?

9 A. It was not.

10 Q. After Jimmie left, do you remember anybody coming
11 back to the room?

12 A. Before or after he came back with his wife?

13 Q. Do you remember him coming back with his wife?

14 A. Yes.

15 Q. So when he came back with his wife to check on
16 you, did he knock on the door?

17 A. I woke up startled. He came in my room with the
18 key.

19 Q. So he just came in.

20 A. Correct.

21 Q. He didn't knock. Okay. And you jumped up, and he
22 asked if you were okay, something to that effect?

23 A. Correct.

24 Q. And both he and list wife determined you were okay
25 and left, right?

1 A. Correct.

2 Q. You did not see Mr. Middleton?

3 A. Did not.

4 Q. Okay. From where you stood up, they caught you
5 off guard, didn't they? When Jimmie and his wife came
6 in, they startled you?

7 A. I was sleeping, so I wouldn't say off guard. I
8 was just startled.

9 Q. You were startled?

10 A. Yes.

11 Q. Okay. And you -- like, hey, you know, and then
12 there was an interchange, he left your key, you got up,
13 right?

14 A. When he startled me, yes, and that's about the
15 last thing I remember.

16 Q. I'm not trying to trick you. I'm just trying to
17 ask some questions. So you got up, and you were in a
18 state of undress, correct?

19 A. Correct.

20 Q. It was embarrassing?

21 A. I mean, I don't know at the time. Like, after
22 that, that is the last thing I remember. I don't
23 remember as far as me being startled.

24 Q. So you're startled, and then you don't remember
25 anything after being startled?

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1 A. Correct.

2 Q. So you don't remember Jimmie leaving the room?

3 A. I remember that -- when I say startled, I mean,
4 that's the last emotion I can give you. Like, you're
5 asking if I was embarrassed. I didn't have time to be
6 embarrassed. I was more startled. He left out of the
7 room, and that's the last thing I remember for the night.

8 Q. So the last thing you remember for the night was
9 the door closing?

10 A. Correct.

11 Q. You don't remember going outside wrapped in a
12 towel?

13 A. No, sir.

14 Q. You don't remember locking yourself out of your
15 room?

16 A. No, sir.

17 Q. You don't remember seeing Mr. Middleton outside
18 the room?

19 A. No, sir.

20 Q. You don't remember Mr. Middleton coming back into
21 your room?

22 A. No, sir.

23 Q. Now, you don't smoke marijuana, do you?

24 A. No, sir.

25 Q. Do you remember coming back in -- you called him

1 Deputy Green, but you also knew him as Alphonso Green?

2 A. Correct.

3 Q. Right? He was more than a police officer to you.

4 He was an acquaintance, a friend?

5 A. Correct.

6 Q. And the next morning, the two of y'all came back
7 to the hotel, right?

8 A. Correct.

9 Q. And y'all went up to your room.

10 A. Correct.

11 Q. And when you came in the room, it was as you left
12 it that night, the best that you could tell?

13 A. No, sir.

14 Q. Okay. The liquor bottle?

15 A. Yes, sir.

16 Q. It was pretty much empty at that point, wasn't it?

17 A. Yes, sir.

18 Q. There was some marijuana at that point, wasn't
19 there?

20 A. Yes, sir.

21 Q. Now, the dress you were wearing that night was a
22 party dress, right? And I don't mean that in a bad
23 sense. Let me change the word. I saw your eyes. You
24 were wearing an evening gown, dress, an evening dress for
25 a party, correct?

1 A. Yes.

2 Q. Okay. And you had gone down to the party.

3 Originally, you had that dress on. You had some tights
4 or hose on?

5 A. Correct.

6 Q. And some high heeled black and white shoes, right?

7 A. Correct.

8 Q. You, of course, were dolled up for the party,
9 right? You wanted to look good?

10 A. Correct.

11 Q. You don't remember leaving your room that night
12 again.

13 A. After Jimmie closed the door?

14 Q. Right. You don't remember anything after that you
15 say, right?

16 A. Right.

17 Q. So you don't remember getting from -- how you got
18 from your room down to that service area?

19 A. No idea.

20 Q. But the dress that has been described was the one
21 you wore to the party, right?

22 A. Uh-huh.

23 Q. Do you remember if you had your shoes on?

24 A. No, I don't remember. I didn't have my shoes the
25 next morning in the hospital, so I'm assuming not.

1 Q. They were back at the hotel room?

2 A. They were in the hotel room.

3 Q. Your tights, did you have those on?

4 A. No, sir. They were back in the room.

5 Q. When you came back in the room the next morning
6 with Mr. Green, did it appear there had been anybody else
7 in the room?

8 A. Yes.

9 Q. Because there was marijuana in the room?

10 A. Correct.

11 Q. But there wasn't a bunch of cups, like a bunch of
12 people that had come up and partied in your room or
13 anything like that?

14 A. I don't I don't think so, from what I can
15 remember.

16 Q. And Mr. Green, who was in your presence, was also
17 one of the reasons you wanted him to get you from the
18 hospital, right?

19 A. Right.

20 Q. And when he got to the hotel room, he looked
21 through it, right?

22 A. Right.

23 Q. To see if he could see anything amiss, right?

24 A. Correct.

25 Q. And he walked through the bathroom, the bedroom

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1 area and everything, and couldn't see anything amiss,
2 correct?

3 MR. EVANS: Objection. I think that calls
4 for speculation.

5 THE COURT: I'll sustain the objection.

6 MR. SMILEY: Okay.

7 BY MR. SMILEY:

8 Q. I'm going to back up a little bit when you're back
9 at the hospital. You don't remember speaking with the
10 first reporting officer at the hotel?

11 A. I do not.

12 Q. So when Officer Johnson talked to you, whatever
13 you said to him, you got no recollection of?

14 A. No.

15 Q. And you do not remember being taken to MUSC
16 because of your intoxication level?

17 A. I was taken to Roper St. Francis, but I don't
18 remember that part.

19 Q. And you don't remember telling the detective --
20 the officer that you hadn't been sexually assaulted?

21 A. I don't remember that.

22 Q. You don't remember telling them that an
23 unidentified black male in a blue shirt had hit you? You
24 were in a confrontation, physical confrontation? You
25 don't remember telling him that?

1 A. No.

2 Q. And when you woke up at the hospital, they talked
3 to you, and this is at Roper. That night you woke up
4 sometime in the middle of the night, right?

5 A. I remember waking up that night. I don't remember
6 being at the hospital.

7 Q. And do you remember the discussion with your nurse
8 when you turned down being examined for sexual assault?

9 A. I do.

10 Q. You didn't want to be examined for sexual assault,
11 did you?

12 A. At that point, I woke up in the hospital. I was
13 scared. They said I had gotten raped. I just wanted to
14 get out of there and figure out what happened, so that
15 was the only way that they would let me leave, so that's
16 why I turned it down at that point.

17 Q. So you're saying that if you had done the sexual
18 assault they weren't going to let you leave?

19 A. No. That's the only way they would let me leave
20 the hospital, was to say that -- I wanted to turn it
21 down.

22 Q. Okay. So if you had done a sexual assault they
23 wouldn't have let you leave?

24 A. No, they would have let me leave. That's what
25 they wanted me to do, but I had no idea what was going

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1 on, so I refused it at that time.

2 Q. Okay. And so they were holding you because you
3 were intoxicated, right?

4 A. They were holding me because they wanted -- from
5 what I know, they told me they wanted to do a rape kit in
6 case something really happened, so they didn't say
7 anything about alcohol to me at that point.

8 Q. But they wouldn't let you leave on your own. They
9 wanted you to get somebody to come and get you.

10 A. Correct.

11 Q. When you got back to your room, could you tell
12 North Charleston police officers had done anything?

13 A. I couldn't tell.

14 Q. You just wanted to go home, at that point, right?

15 A. Go home and figure out what happened. Pretty much
16 backtrack.

17 Q. All right. And now you get home, and you're
18 debating about what to do next, right?

19 A. Correct.

20 Q. Because Deputy Green, he gave you some advice,
21 correct?

22 A. Correct.

23 Q. And that's one of the things that prompted you to
24 try to find Mr. Middleton, correct?

25 A. Not him, per se, because I didn't even know if he

1 was there. It was to find out what happened.

2 Q. All right. And so since the last person you
3 remember was Jimmie Filbeck, that's who you called?

4 A. Correct.

5 Q. And he had his name and number saved in your
6 phone?

7 A. Jimmie?

8 Q. Yes.

9 A. Yes.

10 Q. Okay. And he called -- you called Jimmie, and as
11 a result of that, you wanted to get in touch with Stew,
12 Stewart Middleton, correct?

13 A. Correct.

14 Q. And it's your testimony you did not have his phone
15 number?

16 A. I did not have his phone number.

17 Q. And so you called another friend to get it.

18 A. It was -- I can't remember between Jimmie and
19 Yolanda. I don't know if Jimmie got the number from
20 Yolanda or how that works, but that's how I knew that
21 number.

22 Q. Okay. And you called Stewart up, and he was short
23 to you, right?

24 A. Correct.

25 Q. And when he got off the phone, you were a little

1 frustrated?

2 A. No, not when I got off the phone. In my mind,
3 like, it was a dead end.

4 Q. Okay.

5 A. I didn't know what happened. Jimmie told me the
6 last person that was there that I thought it was weird.
7 After I said I was in the hospital, I said, I got raped.
8 I'm trying to figure out what happened.

9 He said what was unusual is the defendant
10 walking around where my room was, so he might know
11 something.

12 Q. Okay.

13 A. Asked him to get to the room before me. He did.
14 Called him. He was being short, so at that time I
15 just -- I was just going to, like, chalk it up to nothing
16 happened; like, maybe I was just too intoxicated at that
17 point until he called me back.

18 Q. All right. So he called you back and explained
19 that he couldn't have had that conversation with you
20 earlier because he was with his wife, right?

21 A. No. He just said, I was around some people.;

22 Q. Okay. But when y'all had that conversation, he
23 was forthright and told you y'all had sex, right?

24 A. Not forthright. He was going back and forth, and
25 I was, like, Okay. The last conversation, I said okay,

1 and that's when he said, You really don't remember, do
2 you?

3 And I said no, and that's when he finally,
4 for the last time, admitted that he had sex. He kept
5 going back and forth, saying, We did, we did, we didn't,
6 and I'm, like, I just woke up and, like, what's going on?
7 And he finally said that we had sex.

8 Q. Okay. And then you texted him from your contact
9 in your phone at the advice of Deputy Green to get him to
10 put it in writing, for lack of a better word, right?

11 A. Well, he wasn't a contact in my phone until after
12 I got the text message, which is when I sort of saved his
13 name, but prior to that, yes, on the advice of Deputy
14 Green, I was told that what he did was just hearsay. He
15 said have a conversation with him via text message, and
16 that's why the questions were asked that I asked.

17 Q. So when the officer directed you, you said, Okay,
18 I will, and the text, he responded to your questions,
19 correct?

20 A. Correct.

21 Q. And he was very, at that point, straightforward,
22 correct?

23 A. Correct.

24 Q. He told you he was sorry, right?

25 A. He did.

KAYLA | - CROSS-EXAMINATION

1 Q. Okay. And he didn't realize you were that drunk.

2 A. Not that drunk. He said, I guess you were drunk.

3 Q. I got you. As a result of Embassy Suites giving
4 Mr. Middleton a key, you sued them, correct?

5 A. Correct.

6 Q. And you got a substantial amount of money from
7 them, didn't you?

8 A. I did.

9 Q. Talking about work, you went to work -- when we
10 say substantial, we're talking six figures, right?

11 A. Right.

12 Q. Now, when you went back to work, you were quite
13 uncomfortable, right?

14 A. I was.

15 Q. Do you need a break?

16 A. I'm fine.

17 Q. Okay. And you went out on sick leave, right?

18 A. About -- no, it I did not. After he wasn't
19 terminated from his job, from the job, once he got
20 charged, I quit. After that, I called corporate, and
21 that's when they made them terminate his employment, and
22 they told me that I could go out on six months' leave if
23 I wanted to, and they paid me.

24 Q. So you stayed there for a period of time, and you
25 went out on disability, right?

1 A. Correct.

2 Q. And that was six months of disability.

3 A. Correct.

4 Q. You made a claim, EEOC claim, correct?

5 A. Correct.

6 Q. And you settled that claim and were compensated,
7 correct?

8 A. I was.

9 Q. And I believe while you were on disability you
10 went out to California?

11 A. I did.

12 Q. Did you work out there?

13 A. No.

14 Q. Okay. So you were using your disability to get
15 away to go to California?

16 A. Well, I don't think he knows, but what happened, I
17 just didn't feel safe. I went to a gas station one day,
18 and he was at the pump, pumping gas, and I just felt I
19 wasn't safe, so I went to the other end of the country.

20 Q. So you went to California to get away from
21 Mr. Middleton?

22 A. I felt free. I felt like I didn't have to look
23 over my shoulder.

24 Q. Now, the first detective that you dealt with was
25 Detective Repman, a gentleman from North Charleston; is

1 that correct?

2 A. Correct.

3 Q. And he's the one that initially met you at the
4 North Charleston police station that following Monday?

5 A. That following Monday?

6 Q. Yeah.

7 A. Yes.

8 Q. And you gave him a written statement at that time,
9 right?

10 A. I did.

11 Q. And then after that, y'all went over to your place
12 in Mount Pleasant, right?

13 A. Correct.

14 Q. And he bagged your dress, underwear, and tights,
15 correct?

16 A. He did.

17 Q. In that statement to Detective Repman, do you
18 remember telling him that you only remember having two
19 drinks?

20 A. I don't remember.

21 Q. Would it refresh your memory to look at your
22 statement?

23 A. Sure.

24 MR. EVANS: I believe I have a redacted
25 version -- no, I guess I do. I'll be happy to let him

1 look at that.

2 MR. SMILEY: I appreciate that. And I guess
3 for identification purposes this will be Defendant's 3.

4 (Defendant's Exhibit 3 was marked for
5 identification.)

6 BY MR. SMILEY:

7 Q. I'm going to show you what has been marked as
8 Defendant's Exhibit No. 3, see if you recognize it.

9 A. I do.

10 Q. And would that be the statement that you gave to
11 the detective at the police department?

12 A. It is.

13 Q. I'll give you an opportunity to look at that,
14 especially on the second page, and I'm going to ask you
15 some questions.

16 Have you had an opportunity to review it?

17 A. Yes.

18 Q. I'm going to ask you some questions now.

19 It appears the detective asked you:

20 How many drinks did you have that night and
21 what time frame?

22 And you answered, I remember two. Time frame
23 was from 6:30 to 7:00. I only remember two.

24 Is that correct?

25 A. I said I remembered two, but if you read the first

KAYLA |. - CROSS-EXAMINATION

1 statement, I said I had a few drinks, so between two and
2 three. I didn't remember the third one until Yolanda
3 came to my room at that time.

4 Q. Okay. Did you know Stewart Middleton was married?

5 A. Yes.

6 Q. When is the first time you have met with somebody
7 from People Against Rape?

8 MR. EVANS: Your Honor, I'm going to object
9 on relevancy grounds.

10 THE COURT: Overruled. Go ahead.

11 THE WITNESS: I'm not sure what that is. I
12 don't remember -- what is that?

13 BY MR. SMILEY:

14 Q. You don't remember a Person Against Rape being
15 with you when you went to MUSC?

16 A. Oh, I'm sorry. Yes, yes.

17 Q. When did you meet with that person first?

18 A. That was the first time.

19 Q. At the hospital?

20 A. That's correct.

21 Q. When is the first time that you met with a
22 victim's advocate from North Charleston?

23 A. I don't remember. I don't remember when the first
24 time was. I don't remember.

25 Q. Was it before you went to the hospital at MUSC?

1 A. No, it was after.

2 Q. Now, you went to St. Francis the night, morning
3 of, and then you went back to MUSC after you had gone to
4 the North Charleston police department, correct?

5 A. Correct.

6 Q. Because they said you had to go down to MUSC,
7 correct?

8 A. Correct. They had to -- the detective escorted me
9 there.

10 Q. The same one that went out to your apartment?

11 A. Correct.

12 Q. They took you down to MUSC, you met with the
13 PARR person, and the nurse did a workup, right?

14 A. Correct.

15 Q. And that would have been on Monday, correct?

16 A. Correct.

17 Q. That happened Saturday night, and you went to the
18 hospital on Monday.

19 A. Correct.

20 Q. Had you ever been in a blackout before?

21 A. No.

22 Q. Had you ever had that much to drink before?

23 A. I have. I have had that much to drink, yes. It
24 was just a while.

25 Q. Excuse me?

KAYLA | - CROSS-EXAMINATION

1 A. It was just a while since I had drank that much.

2 Q. I beg the Court's indulgence.

3 Before this incident that you allege, had you
4 and Mr. Middleton had any problems before?

5 A. No, sir.

6 Q. Okay. And after this allegation, did you and
7 Mr. Middleton interact in any way?

8 A. No, sir.

9 Q. Other than the one time you saw him and he didn't
10 see you, you weren't in his presence?

11 A. When he -- that following Monday when he came to
12 the front office, stuck his head in and made eye contact
13 with me and then left out.

14 Q. He's worked there for the several years you had?

15 A. Correct.

16 Q. Mr. Middleton had never made any inappropriate
17 comments to you in the past, had he?

18 A. Not that I could remember.

19 Q. Okay. He hadn't stalked you in any form or
20 fashion or reached out to you in social medial in any
21 form or fashion, had he?

22 A. No, not inappropriately.

23 Q. Okay.

24 MR. SMILEY: That's all I have, Your Honor.

25 THE COURT: Redirect?

KAYLA | - REDIRECT EXAMINATION

1 MR. EVANS: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. EVANS:

4 Q. Kayla, that Air Force incident, let's not beat
5 around the bush about that. Does that have any bearing
6 on your testimony here today?

7 A. Absolutely not.

8 Q. When was that?

9 A. I don't remember the year, but I was 20.

10 Q. Did that affect your truthfulness today?

11 A. Absolutely not.

12 MR. SMILEY: Objection, Your Honor.

13 THE COURT: What is your legal objection?

14 MR. SMILEY: Relevance.

15 THE COURT: Overruled. You brought it out on
16 cross. This is redirect. Overruled.

17 MR. EVANS: I'll move on, Judge.

18 BY MR. EVANS:

19 Q. Kayla, Mr. Smiley asked you whether you remember
20 after Jimmie leaving going outside, getting locked out of
21 your room and speaking with the defendant, and you said
22 you don't remember.

23 A. Correct.

24 Q. Is that possible that even happened?

25 A. It's possible.

KAYLA | - REDIRECT EXAMINATION

1 Q. Is it possible that after Jimmie left you stayed
2 in your room or passed out and fell asleep on your bed?

3 A. Correct. It's very possible.

4 Q. And Deputy Green, Alphonso Green, do you know what
5 law enforcement agency he works for?

6 A. Charleston County, I think.

7 Q. And do you remember who investigated this
8 incident?

9 A. Charleston.

10 Q. Okay. And Mr. Smiley also asked you about being
11 at the hospital and them telling you that you needed to
12 take a SANE exam. Do you recall them telling you you had
13 to go to MUSC, actually, get that SANE exam?

14 A. No, sir.

15 Q. Were you still intoxicated at the hospital?

16 A. I was still pretty much out of it.

17 Q. Okay. And Mr. Smiley talked a lot about your
18 civil lawsuits. Those have been settled, correct?

19 A. Correct.

20 Q. Why are you here today?

21 A. For justice for myself.

22 Q. Okay. Does that make any difference in the
23 lawsuits?

24 A. Absolutely not.

25 Q. And those are done with, as far as you know?

1 A. They're done with.

2 Q. And Mr. Smiley also asked you about that statement
3 you gave to Detective Repman. Do you remember in that
4 statement how the defendant told you you got into your
5 room?

6 In your statement that you gave to Detective
7 Repman, you mentioned that you had asked the defendant
8 how he ended up getting into your room that night? Do
9 you remember what he told you?

10 A. Yes. He told me that he told the front desk clerk
11 that he's my boyfriend and I had locked myself out of my
12 room.

13 Q. Was he being truthful when he said that?

14 A. Absolutely not.

15 Q. And did he tell you he was being truthful when he
16 said that?

17 A. No. He would be lying.

18 Q. And did he tell you he was being untruthful?

19 A. Yes.

20 MR. EVANS: Thank you. Beg the Court's
21 indulgence.

22 Thank you, ma'am. I don't have anything
23 further.

24 THE COURT: Recross?

25 RECROSS-EXAMINATION

KAYLA | - RECROSS EXAMINATION

1 BY MR. SMILEY:

2 Q. You say he admitted he was untruthful about being
3 your boyfriend, right?

4 A. Admitting that as saying he said it, and that's a
5 lie, and he knew that was a lie. That is what I mean by
6 him admitting --

7 Q. About being your boyfriend.

8 A. Right.

9 Q. Now -- beg the Court's indulgence.

10 At the time you called Deputy Green, did you
11 know that he didn't work for North Charleston?

12 A. Charleston, North Charleston -- I didn't know the
13 difference.

14 Q. It was all the same to you. He was a police
15 officer, correct?

16 A. Correct. He was an officer of the law. That's
17 why I called him.

18 MR. SMILEY: That's all I have.

19 THE COURT: Thank you. You may step down.
20 Thank you very much.

21 Call your next witness.

22 MR. SMILEY: Your Honor, before we do that,
23 could I have five minutes?

24 THE COURT: All right. We'll take about a
25 five-, ten-minute break. Don't discuss the case among

1 .yourselves.

2 (In open court, jury present.)

3 THE COURT: Call your next witness, please.

4 MR. EVANS: Thank you, Your Honor. State
5 calls Yolanda Alston.

6 May it please the Court, Your Honor?

7 YOLANDA ALSTON,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. EVANS:

12 Q. Good afternoon, Ms. Alston. How are you?

13 A. I'm fine, thank you.

14 Q. Where are you from originally?

15 A. Originally, Queens, New York.

16 Q. Can you speak up a little bit? Thank you.

17 A. Originally, Queens, New York.

18 Q. Okay. When did you come down to South Carolina?

19 A. 1986.

20 Q. A while ago.

21 A. Yes.

22 Q. How do you know Kayla?

23 A. We worked together.

24 Q. Where did you work?

25 A. SKF.

1 Q. Okay. Is that where you're working now?

2 A. No.

3 Q. Where are you working now?

4 A. Volvo.

5 Q. The Volvo plant?

6 A. Yes.

7 Q. How close were you with Kayla?

8 A. Very close.

9 Q. How did you know the defendant, Mr. Middleton?

10 A. He also worked at SKF with us.

11 Q. How close were you with him?

12 A. I wouldn't say close at all. We knew each other.

13 Q. Just kind of work acquaintances?

14 A. Yes.

15 Q. Closer to Kayla?

16 A. Absolutely, yes.

17 Q. Do you recall the 2013 Christmas party that year?

18 A. Some.

19 Q. Where was it held?

20 A. At the hotel at the Tanger Outlet.

21 Q. Do you remember about what time you got to the
22 Christmas party that night?

23 A. Around 8:00-ish, 8:00.

24 Q. How soon did you see Kayla when you got there?

25 A. As soon as I walked in the ballroom where the

1 party was held, I saw her, and we embraced each other.

2 Q. How was she acting?

3 A. When I saw her, I could tell she was intoxicated.

4 Q. So you could tell she had been drinking?

5 A. Yes.

6 Q. How quickly when you saw her?

7 A. Very quickly.

8 Q. Did you go to her room when she was staying at the
9 hotel at all?

10 A. Yes.

11 Q. Did you see her drink anything when she was in the
12 room?

13 A. Yes.

14 Q. Do you recall what it was?

15 A. No, I don't know what the name of it was, but I
16 know it was a clear liquor.

17 Q. Did you have anything to drink?

18 A. No.

19 Q. How long were you in her room with her?

20 A. Probably like 10, 15 minutes. No more than 15
21 minutes.

22 Q. And where did y'all go after that?

23 A. Back down to the ballroom.

24 Q. To the Christmas party?

25 A. Yes.

YOLANDA ALSTON - DIRECT EXAMINATION

1 Q. How was Kayla acting at the party?

2 A. Very feely, kind of touchy, and she was
3 intoxicated.

4 Q. Did she seem like she was too intoxicated to you?

5 A. Yes.

6 Q. And I'm assuming, correct me if I'm wrong, you've
7 been around drunk people before?

8 A. Absolutely.

9 Q. On a scale of one to ten, how drunk did Kayla
10 appear to you?

11 A. I would give her eight.

12 Q. How was she acting, specifically?

13 A. She was slurring, talking to me, almost fell with
14 the shoes she had on, so -- I could tell.

15 Q. What did you do at that point?

16 A. Me and another coworker made the decision that she
17 should be taken away from the party, especially with the
18 situation she was in.

19 Q. Okay. And why was that?

20 A. Because she was embarrassing.

21 Q. Who was the other coworker?

22 A. Jimmie Filbeck.

23 Q. Did you go back to the room with her?

24 A. No, I didn't.

25 Q. Did Jimmie take her back up?

1 A. Yes.

2 Q. Did you see the defendant, Stewart, at a party?

3 A. Yes.

4 Q. Do you know if he was there when Kayla was at the
5 party?

6 A. No. She was up in her room by then.

7 Q. So he didn't arrive until she was gone.

8 A. Yes.

9 Q. Did you have any interaction with him?

10 A. No. We just spoke in passing because at that
11 point I was about to leave.

12 Q. Did you know if he was intoxicated?

13 A. I couldn't tell.

14 Q. Was he acting like Kayla was acting?

15 A. Just by passing, I don't think so. I can't
16 honestly say.

17 Q. How long were you at the party the whole time that
18 night?

19 A. About two hours.

20 Q. Did you see Kayla anymore after she went back to
21 her room?

22 A. No.

23 Q. When is the next time you spoke to her?

24 A. The next morning.

25 Q. Did she disclose a sexual assault to you?

1 A. Yes.

2 Q. Did she say when and where it happened?

3 A. Yes.

4 Q. When and where did it happen?

5 A. At the hotel.

6 Q. Did she say when?

7 A. Sometime after I left. I'm not sure exactly what
8 time, but it was after I left.

9 Q. Are you okay? There's some tissues.

10 A. Yes, I'm good, thank you.

11 Q. What was going through your head when she was
12 telling you that?

13 A. I felt bad.

14 Q. Okay. Did you ever speak to the defendant after
15 you learned about the incident?

16 A. No.

17 Q. How long did Kayla work at SKF after the incident?

18 A. I would give it maybe a month.

19 Q. Did the defendant still work there when she was
20 working there?

21 A. Yes.

22 MR. EVANS: Beg the Court's indulgence.

23 Thank you, Ms. Alston. I don't have anything
24 further at this time. Please answer any questions
25 Mr. Smiley may have.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Ms. Alston, my name is Jim Smiley. I represented Mr. Middleton. You arrived at the party alone?

A. No.

Q. You had someone with you?

A. Yes.

Q. Male or female?

A. Female.

Q. So you and a girlfriend came to a party?

A. Well, it wasn't a girlfriend, somebody else.

Q. Excuse me. I'm not trying to be tricky. You and a female arrived at the party, and you, upon seeing Kayla, you said she was embarrassing herself?

A. She was intoxicated.

Q. She was talking, though, right?

A. Yes.

Q. And I think you said she was being friendly?

A. Yes.

Q. And I think you said touchy-feely?

A. Yes.

Q. And she had on some really tall heels, right?

A. Yes.

Q. Good three-inch heels?

A. I don't know the inches.

1 Q. Sort of like the ones you got on? I mean, as far
2 as the heel goes?

3 A. I really can't recall. I know they were heels. I
4 can't recall.

5 Q. That's fine. She walked on her own power to
6 leave, though, right?

7 A. At what point are you talking about?

8 Q. When she left the party.

9 A. I had somebody go with her to the party, so --

10 Q. Let me back up. Let's back up and start over.

11 I believe you said you arrived at the party
12 at 8:00, give or take.

13 A. Yes.

14 Q. So when you got there, the party was already
15 going?

16 A. Yes.

17 Q. Upon arriving, when you saw Kayla --

18 A. Yes.

19 Q. -- because being a close friend of Kayla's, you
20 saw her condition?

21 A. Yes.

22 Q. As a result, it was suggested that someone take
23 her to her room?

24 A. Yes.

25 Q. Mr. Filbeck volunteered to do that?

1 A. Yes.

2 Q. And she walked out?

3 A. Yes.

4 Q. When she left, she was carrying on a conversation?

5 A. Yes.

6 Q. At that point, you didn't know how much she had
7 had to drink?

8 A. No.

9 Q. Did you see her drinking at the party?

10 A. Not in the ballroom, no.

11 Q. In the ballroom, you didn't see her with a drink?

12 A. No.

13 Q. After she left, the next time you spoke or saw her
14 was the next day?

15 A. Next morning.

16 Q. Next morning, and when she contacted you the next
17 morning, she wanted to know what happened?

18 A. Yes.

19 Q. She told you that she had been sexually assaulted?

20 A. Yes.

21 Q. Okay. At that point in time, she was also telling
22 you she doesn't don't know what happened the night
23 before, right?

24 A. Yes.

25 Q. And that the last person she remembered was

1 talking to Jimmie Filbeck, correct?

2 A. I can't say.

3 Q. That's fine. Did you give her the phone number
4 for Jimmie?

5 A. Excuse me?

6 Q. Did you give her Jimmie Filbeck's number?

7 A. No.

8 Q. Did you give her Stewart Middleton's phone number?

9 A. No.

10 Q. You went to the room with Kayla at some point,
11 right?

12 A. Yes.

13 Q. And when you were in the room, it was to tidy up,
14 basically? What was the purpose of you going in the
15 room?

16 A. She just wanted to show me that she had a room for
17 that night.

18 Q. She was excited about the whole party?

19 A. Yes.

20 Q. Come see my room, so the two of you went up there,
21 and while you were there, did you see her have a drink?

22 A. Yes.

23 Q. What -- and I know you said clear. Did you see
24 her mix a drink?

25 A. No.

1 Q. So in front of you she didn't make her drink?

2 A. Yes.

3 Q. Yes, she did not?

4 A. She poured something in a cup. As far as what she
5 mixed, I can't recall.

6 Q. Do you recall if she did mix something with it?

7 A. No, I can't.

8 Q. Okay. Do you recall if she used ice?

9 A. No, I can't.

10 Q. Did you have a drink while you were there in her
11 room?

12 A. No, I didn't.

13 Q. So y'all see the room, and y'all come back down?

14 A. Yes.

15 Q. She didn't bring her drink with her when she came
16 back down?

17 A. No.

18 Q. And then after that is when she went back to her
19 room, with Jimmie?

20 A. After.

21 Q. When the two of y'all returned from her room back
22 to the ballroom, it was sometime after that when
23 Mr. Filbeck took her back to her room, correct?

24 A. Yes.

25 Q. From the time the two of you all came back to

1 Mr. Filbeck escorting her back to the party was out of
2 the party was about how long?

3 A. Probably -- 15, 20 minutes, maybe.

4 Q. Okay. So you got there at 8:00, you hung out at
5 the party for a bit, went with her to her room, came back
6 in. Approximately 15 minutes later, she left for the
7 night.

8 A. Yes.

9 MR. SMILEY: Beg the Court's indulgence.

10 That's all I have. Thank you.

11 THE COURT: Any redirect?

12 MR. EVANS: Briefly, Your Honor.

13 REDIRECT EXAMINATION:

14 BY MR. EVANS:

15 Q. How close were Kayla and the defendant, do you
16 know?

17 A. I can't honestly say.

18 Q. So you think they were close?

19 MR. SMILEY: Objection, Your Honor. She just
20 said she doesn't know.

21 THE COURT: What's your legal objection?

22 MR. SMILEY: Speculation, Your Honor.

23 THE COURT: Overruled. Go ahead.

24 BY MR. EVANS:

25 Q. You don't know how close they were, or do you know

1 if they were close?

2 A. I know we all worked together, so we communicated.
3 As far as close, what kind of close are you talking
4 about?

5 Q. Were they, like, friends outside of work or
6 something like that?

7 A. When we had a company function, that I know of.

8 Q. But other than that?

9 A. No.

10 THE COURT: Recross?

11 MR. SMILEY: No, sir.

12 THE COURT: Okay. You may step down. Thank
13 you so very much.

14 All right. Let me see the attorneys at this
15 time.

16 (Discussion held at sidebar.)

17 THE COURT: All right. Mr. Foreman, ladies
18 and gentlemen: We're going to stop at this time, and
19 we'll reconvene in the morning at 9:30. We'll start the
20 testimony at that time for your planning purposes.
21 Tomorrow we will stop the trial somewhere around between
22 1:30 and 2:00. I've got a previous engagement I have to
23 make tomorrow, so we'll stop somewhere between 1:30 and
24 2:00 and reconvene Wednesday morning at 9:30 for your
25 planning purposes.

YOLANDA ALSTON - REDIRECT EXAMINATION

1 Please don't discuss the case with anyone
2 else, don't do any electronic examination of any of the
3 crimes or anything about this case. I want you to make a
4 decision on what you hear in the courtroom. Have a good
5 evening. I'll see you in the courtroom at 9:30, and when
6 you come to the courthouse tomorrow, come straight to the
7 jury room, and the bailiffs will show you where to come
8 to tomorrow morning.

9 Thank you very much.

10 (October 24, 2017.)

11 (In open court, jury not present.)

12 THE COURT: Anything from the State before we
13 bring the jury in?

14 MS. BALDWIN: I think Mr. Evans just stepped
15 out.

16 THE COURT: Anything from the defense?

17 MR. SMILEY: No, sir.

18 (In open court, jury present.)

19 THE COURT: Call your next witness, please.

20 MR. EVANS: Thank you, Your Honor. The State
21 calls Jimmie Filbeck.

22 JIMMIE LYNN FILBECK, JR.

23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 THE WITNESS: My name is Jimmie Lynn
2 F-i-l-b-e-c-k, Junior.

3 BY MR. EVANS:

4 Q. May it please the Court, sir: Good morning
5 Mr. Filbeck. How are you?

6 A. Good, thanks.

7 Q. What part of the Charleston do you live in?

8 A. I live around Summerville, in the Knightsville
9 area.

10 Q. Where are you currently employed?

11 A. At SKF, North Charleston.

12 Q. What do you do at SKF?

13 A. I'm a supply team planner, production planner.

14 Q. Is that where you were working in December 2013?

15 A. Yes, sir.

16 Q. Do you know the defendant in this case?

17 A. Yes, sir.

18 Q. How do you know him?

19 A. He is -- he was a coworker of mine.

20 Q. Do you know Kayla |. or |. ?

21 A. Yes.

22 Q. How do you know her?

23 A. She was also a coworker.

24 Q. How close were you with Kayla when she was working
25 with you?

JIMMIE LYNN FILBECK, JR. - DIRECT EXAMINATION

1 A. We were pretty close. We were pretty good
2 friends. She taught me my other job. I was
3 transitioning from assembly.

4 Q. So she kind of trained you on a new job you
5 undertook over there?

6 A. Yes. She was training me in the warehouse.

7 Q. Do you recall the evening of December 14, 2013?

8 A. Yes.

9 Q. Where were you that night?

10 A. I was at Embassy Suites in North Charleston.

11 Q. What was going on at Embassy Suites?

12 A. It was a Christmas party, a company function.

13 Q. Do you remember what time you got to the Christmas
14 party?

15 A. It was probably between 5:30 and 6:30, somewhere
16 around there.

17 Q. Did you see Kayla when you got there?

18 A. Not immediately.

19 Q. Did you see her at some point?

20 A. I did see her at some point.

21 Q. How did she appear to you when you saw her?

22 A. She was kind of intoxicated. She was intoxicated.

23 Later on that night, it was a different story, but
24 whenever I got there, she was actually coherent and she
25 was just intoxicated.

1 Q. So later in the night she became more intoxicated?

2 A. Yes. About an hour later she came up to me, and
3 she was pretty much out and out drunk.

4 Q. Was anyone there with her?

5 A. No. I did drive one of my coworkers.

6 Q. Had you planned on somebody from your family
7 coming?

8 A. My wife.

9 Q. But she was not there at that point?

10 A. She was not there at that point.

11 Q. So when Kayla came up to you, you could tell she
12 was, as you say, falling down drunk. What did you do?

13 A. She asked me to take her to her room because she
14 didn't want to embarrass herself.

15 Q. So what did you do next?

16 A. Well, that's when I took her to her room. We
17 walked to the elevator, and she was stumbling. She was
18 basically hanging off of me, and when we got to the
19 elevator, I got to the control panel, and then she
20 basically fell down, on the elevator floor.

21 So I asked her what room she was in. I can't
22 remember what the exact number was. I pushed the button
23 for the elevator, for the floor, and I picked her up off
24 the floor, and the elevator opened up, and we went to her
25 room.

1 BY MR. EVANS:

2 Q. How was she -- you said she was falling down. How
3 was she acting when you were taking her back to her room?

4 A. She was just drunk. I mean, I don't really know.
5 She was -- she was basically incoherent, and I just
6 couldn't -- she was basically just hanging off of me and
7 falling down.

8 Q. Okay. And when you say hanging off of you, do you
9 mean, like, for support?

10 A. Yeah, she was just basically hanging off.

11 Q. What did she do when you took her to her room?

12 A. We got up to her door, and she fell down again. I
13 picked her back up, and she put her key in the door,
14 opened her door, and went to lay down.

15 Q. What happened when you got to her room?

16 A. When we got in, she stood at the counter and she
17 said she wanted another drink, so she -- I don't remember
18 exactly what kind of alcohol it was, but she poured a
19 shot glass and did a shot, and she went to go sit on the
20 bed and she fell on the floor. I picked her up and put
21 her on the bed, and she was wobbling.

22 Q. Did you know what she was drinking?

23 A. I want to say it was vodka, but I do not know.

24 Q. It was liquor?

25 A. Yes, it was hard liquor.

1 Q. What happened after she sat down on the bed?

2 A. After she sat down on the bed, she wanted me to
3 stay with her just because -- I have no idea, and I told
4 her I could not, and I have to go back to the party. And
5 after two or three minutes of that, she basically just
6 fell backwards on to the bed, and I took -- well, before
7 that, she actually wanted me to come back and check on
8 her.

9 So she had her two keys in her hand, and I
10 took one of them, and then she basically fell back and
11 then I put a cover on top of her and I left and went back
12 to the party.

13 BY MR. EVANS:

14 Q. Okay. Was she still clothed when you left?

15 A. Yes, she was fully clothed.

16 Q. Did you notice the defendant at the party when
17 Kayla was there?

18 A. Excuse me?

19 Q. Did you notice the defendant was at the party when
20 Kayla was there?

21 A. I didn't notice him until later that night.

22 Q. So you didn't notice him when Kayla was at the
23 party?

24 A. No.

25 Q. How close were you with him?

JIMMIE LYNN FILBECK, JR. - DIRECT EXAMINATION

1 A. Not very close. Just a coworker, basically. We
2 worked the same shift at the time, but we worked in
3 different departments, but we never really talked.

4 Q. You were close to Kayla?

5 A. Closer.

6 Q. How long were you at the party before you took
7 Kayla to her room, do you think?

8 A. Probably about an hour and a half, two hours.
9 Probably about 9:00 that night.

10 Q. So did your wife arrive at some point?

11 A. She did. She arrived about 15 minutes after I
12 actually took Kayla to her room.

13 Q. Did you do anything before you left the party for
14 the night?

15 A. Well, she wanted me to come back and check on her,
16 so that's what I did. I took -- my wife was wanting me
17 to -- there was no doubt about that, but I was adamant
18 about going and checking on Kayla.

19 Q. So your wife was ready to go?

20 A. She was extremely ready to go.

21 Q. Was the party going on at that point?

22 A. It was more of an after-party.

23 Q. The party was winding down?

24 A. The party was winding down. Everybody was
25 leaving.

1 Q. Why did you want to go back and check on Kayla?

2 A. Basically, to make sure she was still breathing.
3 I knew at some point she had told me during the time we
4 worked together she had a heart condition, and it's not
5 good -- when you drink a lot, you can't have a heart
6 condition, so I really wanted to go back and check and
7 see if she was okay.

8 Q. So, I mean, was it because she was so intoxicated?
9 Is that part of the reason?

10 A. Oh, yeah, definitely, just wanted to go check on
11 the wellbeing of a fellow coworker.

12 Q. Did you ask anyone other than your wife to
13 accompany you upstairs to check on her?

14 A. No, I didn't.

15 Q. What happened when you got on the elevator going
16 upstairs?

17 A. We were walking back to the elevator, and I know
18 Stewart was kind of following us, and I didn't think
19 anything of it at the time because everybody was plan --
20 not everybody, but a lot of the people there were
21 planning on getting rooms and staying the weekend and
22 having a big party, so I didn't even think about it.

23 And when we went back to the elevator, my
24 wife gets in and I get in and then Stewart gets in, and
25 I'm kind of sitting there, waiting to see if he's going

JIMMIE LYNN FILBECK, JR. - DIRECT EXAMINATION

1 to push a button to go to a floor because I think he has
2 a room there, and he never does, so I was -- well, I
3 can't stay here all night, so I pushed the button for
4 Kayla's floor, and then we go up to her room.

5 Q. Did he say anything to you on the elevator?

6 A. I don't ever remember Stewart saying anything.

7 Q. Okay. So just kind of silently?

8 A. Just kind of there, just kind of hanging out.

9 Q. So what happened when y'all got off the elevator?

10 A. We get off the elevator. I go to open the door to
11 Kayla's room. I didn't knock. I didn't do anything. I
12 just opened it up, because I didn't think she was going
13 to be actually up. So I open the door, swing it open,
14 and next thing I know Kayla, jumps out of bed, and she's
15 completely nude. And as soon as I see her, I turned
16 around and everybody gets out of the room.

17 Q. Do you know where the defendant was at that point?

18 A. I do not know where he was at. He was either
19 right outside the door or possibly in. I'm not sure.

20 Q. So he had walked in the room with you?

21 A. Yes.

22 Q. Did y'all ask him to come to the room with you?

23 A. No. At no point did I ever ask him to come.

24 Q. Did he say anything to you from leaving the
25 elevator to going to the room?

1 A. No.

2 Q. So what happened after she was startled and jumped
3 up?

4 A. I immediately turned around and either goes out
5 the door or moves away from the door. My wife is
6 leaving. I had the room key in my right hand. There's a
7 TV stand -- not a TV stand, but a little counter off to
8 the right-hand side. I took the key I had and threw it
9 on the counter, and then I grabbed the door with my left
10 hand and I closed door.

11 Q. So you know you closed the door?

12 A. Yeah.

13 Q. Where did you go after that?

14 A. After that, we went to the elevator to go
15 downstairs.

16 Q. All three of you went to the elevator?

17 A. All three of us went back.

18 Q. Did you see Kayla come out of her room at any
19 point between you getting out of her room and getting on
20 the elevator?

21 A. I never did see her come out.

22 Q. Did you hear her say anything?

23 A. I never had the door open. I never heard her say
24 anything. As far as I knew, she was in her room and she
25 was safe.

JIMMIE LYNN FILBECK, JR. - DIRECT EXAMINATION

1 Q. What happened when you got back on the elevator?

2 A. When we got to the elevator, I pushed the button
3 to go down to the basement, or the lobby, and right
4 before the elevator door closes, Stewart jumps out.

5 Q. Did he say anything before he jumped out?

6 A. Didn't say a word, just jumped out.

7 Q. He didn't say anything like, Kayla is locked out
8 of her room?

9 MR. SMILEY: Objection, Your Honor. Asked
10 and answered.

11 THE COURT: Overruled. Go ahead.

12 BY MR. EVANS:

13 Q. Did he say anything about Kayla being locked out
14 of her room or anything like that?

15 A. I didn't hear anything come out of -- no, I did
16 not hear anything.

17 Q. Okay. Do you remember -- it was the elevator
18 closest to Kayla's room; is that correct?

19 A. Yes.

20 Q. Okay.

21 A. Yes, it was.

22 Q. So if you're facing inside the elevator facing the
23 elevator doors, Kayla's room is on the right?

24 A. Right.

25 Q. So where were you standing --

1 A. I was standing at the control box. It wasn't on
2 either side, but basically blocking -- as far as I
3 remember, it was blocking Kayla's room.

4 Q. Okay. So you're on the far right of the elevator?

5 A. Yes.

6 Q. Where is your wife standing?

7 A. My wife is standing right behind me to the left.

8 Q. And where is the defendant standing?

9 A. He's standing over to the right in the front.

10 Q. So he's the --

11 A. It's kind of a triangle shaped elevator.

12 Q. So the opposite side of her room to the elevator?

13 A. Yes.

14 Q. He jumped off the elevator and didn't say a word.

15 A. He doesn't say a word.

16 Q. Is that the last time you saw Kayla or the
17 defendant that night?

18 A. That's the last time I saw either one.

19 Q. When is the next time you spoke to Kayla?

20 A. I believe it was the next day, somewhere between
21 10:30 and noon. She called me and she basically didn't
22 know what had happened to her and she was searching for
23 answers, which I couldn't really give her because I left
24 so I don't really know.

25 MR. EVANS: Beg the Court's indulgence.

JIMMIE LYNN FILBECK, JR. - DIRECT EXAMINATION

1 BY MR. EVANS:

2 Q. Mr. Filbeck, when you left Kayla in her room the
3 first time, what was her sort of state?

4 A. The very first time?

5 Q. Yeah.

6 A. She was extremely intoxicated.

7 Q. Okay. Was she conscious or was she kind of --

8 A. She was conscious, but I don't believe she knew
9 what she was talking about.

10 Q. Okay.

11 MR. EVANS: Beg the Court's indulgence.

12 THE COURT: Cross-examination.

13 MR. EVANS: Thank you, Your Honor. I don't
14 have anything further this morning.

15 CROSS-EXAMINATION

16 BY MR SMILEY:

17 Q. Mr. Filbeck, my name is Jim Smiley. I represent
18 Stewart.

19 A. Okay.

20 Q. How long did you work with Kayla?

21 A. I would say around four years.

22 Q. Did you interact with her socially at all?

23 A. Not really outside of work.

24 Q. Okay. Did she talk to you about her social life?

25 A. Somewhat. I mean, not very often, but we did have

1 casual conversations.

2 Q. All right. Had you met her boyfriend?

3 A. No.

4 MR. EVANS: Objection, Your Honor.

5 THE COURT: What's your legal objection?

6 MR. EVANS: Question is irrelevant in this
7 line of questioning.

8 THE COURT: Overruled. Go ahead.

9 MR. SMILEY: All right.

10 BY MR. SMILEY:

11 Q. After a weekend had she ever regaled you with any
12 kind of going out to bars or anything like that?

13 A. No.

14 Q. So you got to the party pretty early, about 6:00?

15 A. Yeah. It was pretty early.

16 Q. And were you drinking at the party?

17 A. Yes, I was.

18 Q. About how many drinks do you think you had?

19 A. I would say I probably had about four or five.

20 Q. Alcohol -- liquor or beer?

21 A. Liquor.

22 Q. Did you see Kayla drinking at the party?

23 A. I did see her take one shot, I think in her room
24 that I saw.

25 Q. So when she was at the party, she didn't appear to

1 be drinking?

2 A. I don't recall that; no, I don't.

3 Q. So you got there at 5:30, and you took her to her
4 room at about what time?

5 A. I would say about 6:30.

6 Q. So she was there -- she was not there when you
7 first arrived?

8 A. I didn't see her when I first arrived. I saw her
9 about ten, fifteen minutes after I arrived.

10 Q. So for about 45 minutes or so, she was at the
11 party when you were there?

12 A. Yeah.

13 Q. Was she being friendly?

14 A. Yes, sir.

15 Q. Outgoing?

16 A. Yeah.

17 Q. But as time goes on, she appeared to be becoming
18 more intoxicated?

19 A. Yes, sir.

20 Q. And after that 45 minutes you were at the party
21 when she was, she came up to you and asked you to take
22 her to the room?

23 A. Yes, sir.

24 Q. And she made a point of saying, Take me to my room
25 because I don't want to embarrass myself?

1 A. Yes, sir. That's exactly what she said.

2 Q. All right. So at that point she was cognizant of
3 the fact of how she was, right?

4 A. Right.

5 Q. It wasn't like she was so blitzed at the
6 party that --

7 A. No, it wasn't like she didn't remember anything.
8 She knew she was getting bad, so she wanted to be
9 taken --

10 Q. So she was intellectually functioning?

11 A. Yes.

12 Q. She was able to make sense of, hey, I'm
13 embarrassing myself. Will you take me to the room?

14 A. Yes.

15 Q. Did you say -- she specifically asked you, it's
16 not like you volunteered?

17 A. No, I didn't volunteer. She asked me.

18 Q. Was some of her girlfriends there at that point in
19 time?

20 A. I'm not sure.

21 Q. Like Yolanda Alston?

22 A. Yeah, she was there.

23 Q. Okay. But she asked you to take her?

24 A. She did. She asked me.

25 Q. Okay. And y'all were in a ballroom, right?

1 A. Yes.

2 Q. And it's not actually -- it's connected, but it's
3 not part of the hotel. You go down a skywalk to get to
4 it?

5 A. Right.

6 Q. So it's a little bit of a walk?

7 A. Oh, yeah. It's a little walk.

8 Q. And, of course, she knows you're married, right?

9 A. Right.

10 Q. And as you're walking her to her room, she's
11 hanging on you?

12 A. Right, yeah.

13 Q. And when you left the barroom, there is no doubt
14 you were taking her to her hotel room, right?

15 A. Yes.

16 Q. The first time you saw her fall down was when she
17 got to the elevator?

18 A. Yes. We were both in the elevator, and that was
19 her first fall.

20 Q. Okay. Was anybody else in the elevator with
21 y'all?

22 A. No.

23 Q. It was just the two of y'all?

24 A. It was just us two.

25 Q. It took you maybe two or three minutes to walk

1 from the ballroom to the elevator?

2 A. Yeah, that's right.

3 Q. So her condition when she left the ballroom and
4 got to the elevator would have been basically the same,
5 right?

6 A. Yeah.

7 Q. All right. And when you take her to her room, she
8 knew what room she was in, right?

9 A. Yes, she did.

10 Q. So she wasn't stupid drunk?

11 A. No. I had no idea what room she was in. She had
12 to know.

13 Q. So she was communicating back and forth?

14 A. Yes, she was.

15 Q. All right. Now, you mentioned that a bunch of
16 people had got rooms there?

17 A. Yes.

18 Q. I think Embassy Suites had blocked off some rooms
19 for you?

20 A. I don't know if there was a rate, or anything but
21 I do know a lot of people were getting rooms.

22 Q. Because there was going to be a Christmas party
23 and then an after-party?

24 A. Yeah. Everybody was planning on having a good
25 time.

1 Q. Staying there at the hotel?

2 A. Yeah.

3 Q. And partying and having a good time?

4 A. That's right.

5 Q. Now, when you got to her room and she pulled out
6 the key and she opened it and got inside, you didn't just
7 say okay, you came inside too?

8 A. No.

9 Q. You came inside.

10 A. Yes.

11 Q. The door was closed, correct?

12 A. Right.

13 Q. And you helped her get into the room?

14 A. Right.

15 Q. And then she wanted a drink?

16 A. Yeah.

17 Q. Did she offer you one?

18 A. She probably did, but I didn't.

19 Q. I know this was three years ago, and I'm not
20 trying to be tricky, but seem to have a pretty clear
21 memory of this, right?

22 A. Yes.

23 Q. And she wanted you to stay with her?

24 A. She did.

25 Q. Was she still -- she's back in her room. She's

1 poured herself a drink, right? She had her own alcohol
2 there, right?

3 A. She did.

4 Q. You didn't see any illegal drugs or anything like
5 that?

6 A. Not that I recall. I don't remember seeing
7 anything like that.

8 Q. All right. She went to sit on the bed and missed
9 it, right?

10 A. Right. She hit the floor.

11 Q. And you helped her up?

12 A. I picked her up and put her on the bed.

13 Q. And she was, like, stay, stay, that kind of thing?
14 She didn't want you to leave?

15 A. She didn't want me to leave, no, she didn't.

16 Q. And is it fair to say you were a little bit
17 uncomfortable, being a married man?

18 A. I was extremely uncomfortable being in there, and
19 I was trying my hardest to get out.

20 Q. You were trying to be a gentleman and polite, but
21 at the same time --

22 A. I was trying to make sure she was okay, yes.

23 Q. Got you. You didn't think when she asked you to
24 take her back to the room to get a girlfriend to come
25 with you or anything like that? It didn't occur to you?

JIMMIE LYNN FILBECK, JR. - CROSS-EXAMINATION

1 A. No. Basically, she just wanted me to take her
2 back to her room.

3 Q. It wasn't so much that you needed more than one
4 person?

5 A. No, no.

6 Q. She was still ambulatory, or walking?

7 A. Yes.

8 Q. She was still a little too intoxicated and trying
9 to have a good time, right?

10 A. I would think so.

11 Q. Yeah. How long do you think you stayed up in the
12 room when you got there?

13 A. It was probably no longer than five minutes.

14 Q. So you were out there about five minutes. She
15 wanted you to stay, and you were, like, yeah, I got to
16 get back to the party. You got your wife coming too. So
17 she said, Please come check on me?

18 A. Yeah.

19 Q. And do you agree?

20 A. I do.

21 Q. So you said she laid down on the bed?

22 A. Yes.

23 Q. You said you put a blanket over her? Was it,
24 like, bedcovers or did you search one out?

25 A. No. It was, like, one of those little hand

1 blankets on the hotel, and I just threw it on top of her.

2 Q. Did you have to go to the closet and get it?

3 A. No, no. It was on the bed itself. I didn't go
4 searching for anything.

5 Q. I got you. I'm just thinking about blankets and
6 hotel rooms, and most of the time they're put up aside,
7 but there was one out?

8 A. There was one out on the end of the bed.

9 Q. I got you. She climbed on the bed, and she had
10 taken her shoes off?

11 A. I think so.

12 Q. But she was dressed otherwise?

13 A. She was fully clothed.

14 Q. And you left and went back to the party?

15 A. Yes.

16 Q. Your wife arrives?

17 A. Yes.

18 Q. And you stay at the party about how much longer?

19 A. It was probably an hour and a half to two.

20 Q. A couple hours?

21 A. It was a couple hours.

22 Q. Party is breaking up. It's time to go. While you
23 were at the party, did you see Stewart?

24 A. I don't remember seeing Stewart until the end of
25 the party. I really don't.

1 Q. He was certainly invited?

2 A. Yes, he was part of the company, so --

3 Q. He had been there a good while?

4 A. Yes.

5 Q. Do you remember his nickname while he was working?

6 A. All I remember was Stew.

7 Q. You never called him Johnson and Johnson, did you?

8 A. No. I never heard that.

9 Q. All right. Y'all getting ready to leave, tell
10 your wife, I need to go check on Kayla. Your wife wasn't
11 real pleased?

12 A. She wasn't happy at all.

13 Q. Let's go. You don't need to be checking?

14 A. Right.

15 Q. Nevertheless, a man of your word, you were going
16 to do what you said you were going to do?

17 A. Yes.

18 Q. Your wife, she's just going to have to understand
19 that. You said you were going to do it, and you wanted
20 to make sure --

21 A. I don't take what I say lightly at all, so if I
22 tell somebody I'm going to do something, I do it.

23 Q. Your word is your bond?

24 A. Yes, sir.

25 Q. And so about that time everybody sort of gradually

1 is leaving the party, right?

2 A. Yes.

3 Q. So you walk back down the skyway and back down
4 into the hotel and go up to the fourth floor?

5 A. Yes, sir.

6 Q. And along the way, as everybody is dragging on
7 out, Stewart is, without being with you, is walking
8 along?

9 A. Yes, sir.

10 Q. Get on the elevator, get off the elevator, fourth
11 floor, and Stew gets out -- and that's what people call
12 him, Stew?

13 A. Yes, that's what they call him.

14 Q. And her door is pretty close to the elevator,
15 right?

16 A. Yes. It's only about two doors down maybe.

17 Q. Two or three, there to the right?

18 A. Right.

19 Q. You come up, don't knock because you thought she
20 was asleep?

21 A. Right. I thought she would be passed out.

22 Q. Open the door, it's you with your wife right
23 behind you?

24 A. Yes, sir.

25 Q. And you don't know exactly where Stew is?

1 A. I had no idea.

2 Q. All right. But at that point, it was obvious he
3 was coming into the room?

4 A. Yeah.

5 Q. Yeah. Walked in, she jumps up, and she's naked at
6 that point?

7 A. Right.

8 Q. She said -- what did she say?

9 A. I don't know if she said anything. Everything
10 happened so fast.

11 Q. Yeah, it was a shock.

12 A. You see somebody naked, and you turn around and
13 leave.

14 Q. Especially when you got your wife right behind
15 you. She's not real happy to be there in the first
16 place.

17 A. I don't think anybody said any words, actually.
18 It was just everybody left.

19 Q. So you don't remember your wife saying anything to
20 the effect of saying, See, she's fine?

21 A. I don't remember that at all.

22 Q. Okay. But she certainly got up?

23 A. Yes.

24 Q. And she's like, Okay, she's fine, and she got up?

25 A. Yes.

1 Q. When she got up, did she stumble?

2 A. I really don't know.

3 Q. It's one of those things, snapshot, you go --

4 A. That's right.

5 Q. You got a wife that's not pleased that you're
6 going up to a woman's room. You walk in, and now the
7 woman is nude, and it's like, Oh, we're out of here?

8 A. It's time to go.

9 Q. Okay. So you left the key quickly. She is fine,
10 close the door, right?

11 A. Yep.

12 Q. And the three of you take the short walk back to
13 the elevator, press the elevator, got into that elevator
14 as it was closing.

15 A. Right.

16 Q. You got there where the control panel is, right?

17 A. Yes, sir.

18 Q. Your wife is beside you?

19 A. Right.

20 Q. And Stewart came in?

21 A. Right.

22 Q. Right? Okay. The front of that elevator is wood,
23 right, where you first get in?

24 A. I don't recall that at all.

25 Q. You don't recall whether the elevator is half

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1 glass and half wood?

2 A. I know it's half glass, I do know, but what it was
3 made of, I'm not sure.

4 Q. Where were you were standing? You're the one that
5 pushed the button, right?

6 A. Yeah. It was either an L or a B.

7 Q. Right, the one with the star by it. So you were
8 up there at that part, right?

9 A. Yes.

10 Q. And your wife was right beside you?

11 A. Yes.

12 Q. From where you were pushing the button, you
13 couldn't see Room 403, could you?

14 A. To tell you the truth, I wasn't kind of --

15 Q. Let's go. I got you. At that point it was like,
16 Let's go.

17 A. Yeah.

18 MR. SMILEY: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 BY MR. SMILEY:

21 Q. Just one more area. You knew Stew from work, but
22 socially y'all really didn't hang out?

23 A. No.

24 Q. But y'all had done some other company functions
25 together, right?

1 A. I'm not sure.

2 Q. Like a camping trip?

3 A. Oh, yeah, we did.

4 Q. You went on a camping trip with someone of the
5 guys from work, and one of the persons was Stew.

6 A. Yeah.

7 Q. So y'all had some interaction?

8 A. Yeah.

9 Q. Y'all were friendly?

10 A. Yeah.

11 MR. SMILEY: That's all I got. Thank you.

12 THE COURT: Redirect?

13 MR. EVANS: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. EVANS:

16 Q. Mr. Filbeck, Mr. Smiley was asking you about the
17 elevator. I want to clarify where everyone was standing.
18 So you were up front on the right, correct?

19 A. Yes, sir.

20 Q. And then you said your wife was kind of here?

21 A. She was to my left and behind me.

22 Q. And where was the defendant?

23 A. He was off to the left and to the front.

24 Q. So he was kind of to the front --

25 A. He was basically beside me.

1 Q. So even with the sort of wooden part of the
2 elevator -- even with, like, the wooden the non-glass
3 part of the elevator, is that where he was standing?

4 A. No. He was off towards the door.

5 Q. All right. But on the left side?

6 A. On the left-hand side of it.

7 Q. And opposite Kayla's room?

8 A. Yes.

9 Q. Okay. So when Kayla asked you to go take her up
10 to her room, did you think it was unusual, you know --
11 did you feel uncomfortable enough to take someone else
12 with you?

13 A. No. She said that she trusted me, and she wanted
14 me to take her to her room.

15 Q. And when you left, she was fully clothed?

16 A. Yes, she was.

17 Q. And this is kind of a dumb question, but did you
18 have sex with her that night?

19 A. No, sir, I didn't.

20 MR. EVANS: Beg Court's indulgence.

21 I don't have anything further. Thank you.

22 THE COURT: Any recross?

23 MR. SMILEY: Nothing.

24 THE COURT: You may step down. Thank you
25 very much. Call your next witness.

BRITTON DELIS - DIRECT EXAMINATION

1 MS. BALDWIN: State calls Britton Delis.

2 BRITTON DELIS,

3 having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MS. BALDWIN:

7 Q. Good morning, Mr. Delis. How are you?

8 A. Very well. You?

9 Q. I'm good, thank you. Where do you work currently?

10 A. Embassy Suites, the Charleston airport and
11 Convention Center.

12 Q. How long have you worked there?

13 A. I've worked there ten years.

14 Q. In what capacity have you worked there?

15 A. Restaurant manager, executive housekeeper,
16 currently the assistant general manager of the rooms
17 division.

18 Q. Okay. And were you working in that capacity in
19 December of 2013?

20 A. Yes. I had assumed that position just a month
21 prior.

22 Q. Okay. And what are the duties as -- what is it,
23 the general manager of the rooms division?

24 A. Correct, assistant general manager. So I oversee
25 the operations of the front desk, housekeeping, and

1 engineering.

2 Q. So you're pretty familiar with the room layouts at
3 that Embassy Suites, I imagine?

4 A. Yes.

5 Q. Generally, could you just sort of give us an
6 overall idea of what most of the rooms look like, how
7 they're laid out?

8 A. The actual guest suite, when you enter?

9 Q. Yes.

10 A. Sure. All of our suites have a living room area.
11 There's a sofa, end table, soft seat as well as an
12 activity table and a TV, and then in the middle of the
13 room area is a wet bar that has a miniature fridge, a
14 microwave, and a little wet bar countertop. Across from
15 that is a full bathroom, pretty self-explanatory; vanity,
16 toilet, tub, and then in the bedroom area with the
17 privacy door, there's the bedroom area that either has a
18 king sized bed or two double beds.

19 Q. So two separate rooms, basically, is what we're
20 talking about?

21 A. Yes. It's a two-room suite basically, two room.

22 Q. How did you become involved in this case?

23 A. Well, as the assistant general manager of the
24 rooms division and had just taken on that role , after
25 the incident occurred, I was approached -- or, you know,

1 investigators, police, to take a look at different
2 evidence that they could collect.

3 Q. And what did you provide for the police?

4 A. Security footage of cameras that overlooked the
5 front desk area as well as lock -- guest room lock
6 interrogation report.

7 Q. And as far as the surveillance video, what was
8 your surveillance system like back in 2013?

9 A. It was a very archaic system that was a VHS driven
10 system, so every night it had a this VHS that we plugged
11 in at midnight and then it would loop for 24 hours and
12 then we would change out the tape, so it was VHS. It was
13 pretty old.

14 Q. Were things very clear on those videos?

15 A. Unfortunately for the investigators, the image
16 wasn't very clear. It was very grainy.

17 Q. Okay. And when you say the image, what are you
18 referring to?

19 A. Of the footage of a gentleman taking -- or getting
20 a key made.

21 Q. That's what they asked you to get the video for?

22 A. Uh-huh.

23 Q. Okay. I'm going to show you what's been ID'd as
24 State's Exhibit 2. What is that?

25 A. This is the guest lock interrogation report I

1 mentioned.

2 Q. Okay. And what room is that for?

3 A. This is Room 403.

4 Q. Okay. Generally speaking, what does that report
5 show?

6 A. This report shows any time a key has been entered
7 into a lock to gain access to a room.

8 Q. And are those reports kept in the ordinary course
9 of your business?

10 A. They're only -- we only do these interrogations if
11 and when needed.

12 Q. Does the computer for the locks, is it still
13 generated, ordinarily?

14 A. Yeah, absolutely. There's a device that they plug
15 in that's similar to a key that can interrogate the last
16 X amount of days, 48 hours, a week. I think it goes up
17 to a seven-day period.

18 Q. So is the information kept somewhere and then
19 downloaded as needed?

20 A. Yes. Yeah, I believe it's uploaded to a server.
21 I understand what you're saying.

22 Q. Can that information be altered or manipulated in
23 any way?

24 A. No. It's a read only reporting.

25 Q. Okay.

1 MS. BALDWIN: Your Honor, at this time I
2 would like to introduce State's Exhibit 2 into evidence.

3 THE COURT: Any objection?

4 MR. SMILEY: Without objection, I believe
5 it's a duplicate of --

6 THE COURT: State's Exhibit 2 admitted
7 without objection.

8 (State's Exhibit 2 was marked for
9 identification and admitted into evidence.)

10 BY MS. BALDWIN:

11 Q. Thank you.

12 I'm going to ask you some basic questions
13 about the report. It should come up in front of you as
14 well. Mr. Delis, there's several of these different
15 reports in here, but when you look in here and it says
16 key number, what is that for?

17 A. Key number is the lock that it is assigned to be
18 programmed with.

19 Q. Okay. The room number?

20 A. Uh-huh.

21 Q. And that's how you know it was Room 403?

22 A. Correct.

23 Q. And also on there it says key used on, and it
24 gives a time?

25 A. Correct.

1 Q. What is that?

2 A. Well, as you can see, there's actually two
3 different times there. One indicates the lock -- the
4 time in the server. The second one, the unadjusted, is
5 the time on the actual guest room door lock.

6 Q. Okay.

7 A. So the first one listed there has the STDA is the
8 unadjusted time that was actually in the server. That's
9 the correct time.

10 Q. Okay. So that's the accurate time, is the top
11 one?

12 A. Correct.

13 Q. Okay. So how many keys are typically made for a
14 guest upon check-in?

15 A. It depends on how many guests are in the room, but
16 usually one or two.

17 Q. One or two?

18 A. Uh-huh.

19 Q. Let me hand you this report.

20 A. Uh-huh.

21 Q. In this particular case, how many keys were made,
22 do you know?

23 A. It appears that there were most likely two keys
24 made. The key ID number indicates where the sequence was
25 made, and it appears key 188 and 189 were made for the

1 current guest -- the guest at that time.

2 Q. And were there any additional guest keys made
3 during the day on December 14th?

4 A. Yes. It appears that a new key was introduced at
5 10:25 p.m., key ID number 190. That was the first time
6 that key was used. That would have been new to the two
7 prior, which would have been, again, in sequence, so 189
8 and 188.

9 Q. That's how you know it was an additional key?

10 A. Key 190, and then it appears 191 as well.

11 Q. When was the last time key 188 was used?

12 A. The last time key 188 was used was at 10:21 p.m.

13 Q. We're talking about Room 403. Who was registered
14 to that room?

15 A. A guest by the name of Kayla |. .

16 Q. Do you know what type of room it was?

17 A. It's a two double bed, nonsmoking.

18 Q. Okay. Was the defendant's name on that
19 reservation?

20 A. No.

21 MS. BALDWIN: Court's indulgence.

22 BY MS. BALDWIN:

23 Q. So just to go back, you said -- what time was key
24 number one 190 used?

25 A. Key 190 was used at 10:25 p.m.

1 Q. Okay. Was there an additional key made?

2 A. Yes. Key 191 was used at 11:52 p.m.

3 Q. Okay. There's been some talk in this case about
4 the cup that was used, that the victim used, in this
5 room. Do you recall what types of cups you had in the
6 room at the time?

7 A. In our guest suites, there is two different types
8 of cups in the room when a guest enters. There are two
9 paper cups that are individually wrapped for the coffee
10 machine, so they're located right by the coffee machine.
11 There's also a total of four small glass rocks glasses.

12 Q. Could there have been a plastic cup in there at
13 the time?

14 A. It wouldn't have been standard in the room -- it
15 wouldn't have been provided by housekeeping.

16 Q. If they were to use a paper cup -- I'm trying to
17 get an idea of the size. Would this be about the size
18 (indicating)?

19 A. Yes. That's exactly the right size, about a
20 ten-ounce paper coffee cup.

21 Q. Okay.

22 MS. BALDWIN: I don't have any further
23 questions. Please answer anything Mr. Smiley has for
24 you.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

1
2 BY MR. SMILEY:

3 Q. Let's start with the cup. You said ten-ounce
4 cups, the coffee cups?

5 A. Yes, sir.

6 Q. And then the plastic cups, or glasses, are
7 smaller, the glass?

8 A. It would be relatively the same size.

9 Q. And the glassware, is it in the bathroom or
10 sitting area?

11 A. There are -- as I said, there are four in total.
12 There are two on the wet bar by the ice bucket, and there
13 are two in the bathroom on the vanity.

14 Q. Okay. Are those, like, highball glasses?

15 A. Short, rocks glasses.

16 Q. Okay. I don't know what a rocks glass is.

17 A. It's a short, cylindrical glass with a heavy glass
18 bottom.

19 Q. Sort of what I would call a highball glass?

20 A. Actually, a highball is a taller --

21 Q. I'm not a drinker.

22 A. That's my restaurant manager coming out.

23 Q. It's one of those short, heavy glasses?

24 A. One of those short, heavy ones, yes.

25 Q. Got it. You can tell I've never been in the

1 restaurant field. All right.

2 Mr. Delis -- and forgive of me. I'm Jim Smiley,
3 by the way, and I represent Mr. Middleton. I hate when I
4 see attorneys ask questions and don't introduce
5 themselves.

6 So since you would have been in charge overall at
7 that time, the housing, and Mr. Rumsey was working that
8 night and left, he would have worked under you, right?

9 A. Correct.

10 Q. At what point was the incident at the hotel
11 reported to you?

12 A. It was reported to me -- I don't know exactly.

13 Q. Days?

14 A. No. It was immediately that morning, at the very
15 latest.

16 Q. So this incident happened Saturday night. By
17 Sunday morning, you knew that something had happened at
18 the hotel?

19 A. Correct.

20 Q. Did you interact with police that day?

21 A. I don't remember.

22 Q. Did you do anything in relation to Room 403?

23 A. After the incident was reported, I know it was
24 locked down for investigation purposes.

25 Q. Who released the room? Did you release the room?

1 A. To be used again?

2 Q. Yeah.

3 A. I don't remember.

4 Q. That's fine. It's been four years.

5 A. Yeah, it's been a while.

6 Q. Yeah. Now, I'm going to have to ask the typical
7 question, all right? This is locked down, taken out of
8 use for investigatory purposes, right?

9 A. Correct.

10 Q. So, typically, it would stay in that state until a
11 detective or police officer said, We're done with it,
12 correct?

13 A. Correct.

14 Q. Because y'all would not release it before that?

15 A. Correct.

16 Q. So at some point in time, somebody in an official
17 capacity let you know, You can clean the room and be
18 done?

19 A. Yes, sir.

20 Q. Nothing about that was there -- released too soon
21 or too late? There wasn't any abnormality that you
22 remember?

23 A. No, sir.

24 Q. So once this incident occurred, the room would
25 have been in lockdown where the only people who would

1 have been able to go in would be for the police at that
2 point in time until you released it, right?

3 A. Correct.

4 Q. So it was left in -- for lack of a better word,
5 the scene was left as it was from the time you were made
6 aware of the incident forward?

7 A. To my understanding, yes.

8 Q. Would it have been locked down that Saturday
9 night?

10 A. I believe it would have been.

11 Q. Well --

12 A. I believe it would have been.

13 Q. Talking about the key locks, the register that you
14 referred to, it works when a key is put in, right?

15 A. Uh-huh.

16 Q. So you can tell when a key is entered and pulled
17 out to go into a room, right?

18 A. Correct.

19 Q. And does it only show successful or does it
20 show -- if there was an unsuccessful attempt, would it
21 show it?

22 A. It would show only successful attempts.

23 Q. It appeared that way, but I wanted to ask the
24 question. So the only entry into that room other than
25 with a key would have been by someone from the inside

1 opening the door, correct? Correct?

2 A. Yes.

3 Q. Okay. Or if someone went out -- y'all got those
4 bars that, like, you're going to the ice machine that you
5 flip so the door doesn't close?

6 A. Right.

7 Q. To keep the door from reengaging, right?

8 A. Correct.

9 Q. Those would be the only two ways without a key to
10 get in the door, right?

11 A. Yes, yes.

12 Q. Do you still have the register in front of you?

13 A. I do.

14 Q. Okay. Good. So we know from looking at the
15 register that the key to 403 -- keys to 403, there were
16 two issued, but not -- this doesn't show when they're
17 issued, this shows when they're used, correct?

18 A. Correct.

19 Q. So what goes in the front desk doesn't show up
20 here, turning it on or anything like that?

21 A. Turning it off.

22 Q. Turning it on, you know, like you're at the front
23 desk, program the key to give to you?

24 A. Correct.

25 Q. That doesn't show up here?

1 A. Correct.

2 Q. All right. So it appears the first time a key was
3 used was at 2:17 in the afternoon?

4 A. Correct.

5 Q. And that would have been key 188?

6 A. Yes, sir.

7 Q. And then it appears key 188 or 189 are used
8 several times that afternoon and evening, correct?

9 A. Yes, sir.

10 Q. And it appears key 188 is the primary key being
11 used?

12 A. Correct.

13 Q. I'm going to put up a copy of what you have in
14 front of you just to make it easier to ask you questions.

15 I'm going to move down a little bit so I'm
16 not looking at the first one, but the top of the page.
17 Looking at this page, the earliest used were at the
18 bottom of the page, right? So when you get a printout,
19 it goes from the most recent use to the first use,
20 correct?

21 A. Yes, sir.

22 Q. All right. So we can look at key 188 and it's
23 used to go in and out a little before 6:00, 6:30, quarter
24 to 7:00, 7:15, and then 7:34, correct?

25 A. Correct.

1 Q. All right. And key 188 is used at 7:34 but then
2 not again until 7:21, right?

3 A. It was used at 7:34 and then again at 10:21.

4 Q. Forgive me. I just misspoke. I wasn't trying to
5 be tricky. So there's a period of about a little less
6 than three hours there, right?

7 A. Correct.

8 Q. And then four minutes after key 188 was used, a
9 third key was introduced, key 190, correct?

10 A. Correct.

11 Q. And that key, looking at your video, appears to
12 correspond to the one that was issued at the front desk,
13 time-wise, or maybe you can't tell me that.

14 A. I don't think I can tell you that, based on what
15 I'm looking at here.

16 Q. Let me back up and ask it a different way. When
17 the guests checked in, it appears there were two keys
18 issued, correct?

19 A. Correct.

20 Q. At some point later in the evening, a third key
21 was issued, correct?

22 A. Or potentially two more keys, yes. More keys were
23 introduced to the lock at that time.

24 Q. Very good, and they're sequential when they're
25 issued for that lock, so 188, 189. The third key

1 issued -- can you tell me that 190 was the third key
2 issued, or can you just say it was the third key used?

3 A. It was the third key used during this guest stay.

4 Q. Okay. And that was at 10:25, right?

5 A. Correct.

6 Q. Then a fourth key -- and I'm going to clip to
7 that. A fourth key was issued at 11:42, a little before
8 midnight that night?

9 A. Correct.

10 Q. Do you know who that fourth key was issued to?
11 Would that have been the policeman?

12 A. That was not a policeman.

13 Q. It was not. Because they used the master key?

14 A. Correct.

15 Q. All right. So a fourth key was introduced to that
16 at 10 to 12:00 that cannot be attributed to the police,
17 correct?

18 A. Correct.

19 Q. And if a master key -- forgive me if I make this
20 real simplistic. A master key is one of the keys that
21 will work in any lock, correct?

22 A. Correct. It was the manager on duty's key.

23 Q. All right. And that was used a little before
24 1:00.

25 A. Correct.

1 Q. And then again at 1:30, correct?

2 A. Correct.

3 Q. Now, a fifth key was introduced or used the
4 following morning at 8:15?

5 A. Correct.

6 Q. All right. And then one of the originally used
7 keys was used at 8:40 in the morning, correct?

8 A. Yes.

9 Q. All right. Now, we know this room was locked down
10 at some point in time, and the master key would have been
11 used not by the hotel staff, but to let in the officers,
12 right?

13 A. Correct.

14 Q. So from this we can tell that officers entered the
15 room a little before 1:00, at 1:30 that night and then at
16 12:11 that afternoon, or is that when your staff goes in
17 to clean?

18 A. No. That would have still been -- that was still
19 a manager's key.

20 Q. Okay. So since your room was locked down, if we
21 know that the police entered the room, maybe with the
22 manager there with them, maybe not -- you don't just give
23 them the master key, do you? So you would have
24 accompanied or somebody would have accompanied from the
25 hotel to let them in on three occasions, correct?

1 A. Correct.

2 Q. Okay. When you go in the room, your bedroom is in
3 the second room, all the way at the end?

4 A. Yes.

5 Q. You come in the door. You've got the hallway
6 space when you first walk in, right?

7 A. You walk right into a living room area. So I walk
8 right in. There's a TV stand right there, a coffee
9 table, and a couch.

10 Q. So it's a place to entertain guesses?

11 A. Yes.

12 Q. And the more private, intimate area, the bedroom,
13 is through another door, correct? Is there a TV in the
14 bedroom too?

15 A. Yes.

16 Q. All right. So the way the room is laid out in
17 that living room area, for lack of a better word, there
18 is the round table with your heavy glasses on it, wet bar
19 in the same area, correct?

20 A. Yes.

21 Q. Coffee machine, that kind of thing?

22 A. Right.

23 Q. The closets for personal belongings, they're back
24 in the bedroom?

25 A. Yes.

1 Q. Can you see -- and you'll know better than
2 anybody. When you first walk in the door, can you see
3 back into the bedroom?

4 A. You can see the foot of the beds, but there's
5 definitely a large percentage of the room that is a blind
6 spot.

7 Q. So if somebody is laying in the bed, you would see
8 their feet?

9 A. Potentially you could.

10 Q. You wouldn't be seeing where they laid their head
11 on a pillow. It's blocked, right?

12 A. Right.

13 Q. So in order to see a guest that's standing up, all
14 right, in the bedroom, they would have to be at the foot
15 of the bed, correct?

16 A. Correct.

17 Q. If you were laying in bed and you jumped up, if
18 you were laying in the bed normally, you would be blocked
19 by a wall?

20 A. Yes.

21 Q. Now, a couple more things. The ballrooms that are
22 down the skywalk, that skywalk is, what, about 50 yards
23 long, is that fair?

24 A. Yeah, yeah.

25 Q. So to get to the skywalk and to the ballroom, you

1 come down the guest elevator, right?

2 A. Yeah.

3 Q. To the second floor?

4 A. Yeah.

5 Q. And you walk down a hallway and through a set of
6 doors?

7 A. Correct.

8 Q. And that's where you're going, from the hotel out
9 into the skywalk, right?

10 A. Right.

11 Q. And then you walk down the skywalk 50 yards or so
12 and go through another set of doors, correct?

13 A. Correct.

14 Q. And then you take a right, and that's where the
15 different rooms are that host social events?

16 A. Correct.

17 Q. All right. Where is your service elevator?

18 A. The service elevator is in the -- just
19 southeast --

20 Q. Let me back you up a second. I know you know the
21 southeast and all that. The skywalk, as it comes off of
22 the corner of your hotel --

23 A. Correct.

24 Q. -- what corner is that? Let's start with that.

25 A. That's the southwest corner.

1 Q. Southwest corner?

2 A. Southwest corner is where the skywalk is.

3 Q. And the service elevator is on the same side as
4 the walkway but in the southeast corner.

5 A. Correct.

6 Q. All right. Does that elevator operate for
7 anybody?

8 A. No.

9 Q. You have to have a key to get in it?

10 A. You would need one of these room master type keys.

11 Q. And that service elevator goes from the ground
12 floor, the first floor, to the top of your hotel?

13 A. Correct.

14 Q. But unless it's specifically requested, for some
15 reason, a guest does not use that elevator?

16 A. Correct.

17 Q. All right. They couldn't just choose -- instead
18 of going to that guest elevator, I'm going to jump on the
19 service elevator. It wouldn't work, would it?

20 A. Correct. The elevator would work.

21 Q. But you couldn't get in it.

22 A. There is a door between the guest area and the
23 service elevator corridor that is locked.

24 Q. That is locked and would require someone from
25 management, on some level, to be able to access it,

1 correct?

2 A. Correct.

3 Q. And that door doesn't stay unlocked. It's all
4 locked, correct?

5 A. Should be, yes.

6 Q. Now, talking about the service elevator on the
7 first floor, you got a little bit different layout of the
8 hotel --

9 A. Yeah.

10 Q. You know your hotel a lot better than me. I've
11 been there for this case. When you come in the front
12 door, the service elevator, can it be viewed by anybody?

13 A. No.

14 Q. To get to that service elevator, it's to the left,
15 southeast corner? I'm getting turned around so you
16 might --

17 A. Right. From where you walk in the front door by
18 the front desk?

19 Q. Right.

20 A. It would be in the very far, far back right
21 corner.

22 Q. Okay. And to get to that, you have to go through
23 some doors?

24 A. One door.

25 Q. Is that door locked or unlocked?

1 A. It is locked.

2 Q. Okay. So to get access to that area, you would
3 have to have some kind of master or -- not master, you
4 know the right word. You can spit it out for me. Pass
5 enabled for staff to enter, correct?

6 A. Correct.

7 Q. So the whole corridor that holds the service
8 elevator is not open to the public?

9 A. Correct.

10 Q. And to get there, somebody has to swipe a card to
11 get you back there, right?

12 A. Correct.

13 Q. You can't just wander in there, can you?

14 A. Correct.

15 Q. Now, back in December of 1993 {sic} when this
16 incident occurred, y'all did not have any security?

17 A. It was 2013.

18 Q. 2013.

19 A. Yeah.

20 Q. It's been a long time ago, and I know it's
21 December 14th, 2013. Okay. But you didn't have any
22 security working at the hotel?

23 A. To my memory, no.

24 Q. The only security cameras you had were at the
25 lobby and front desk area?

1 A. Correct.

2 Q. Now, when people use the ballroom -- when I say
3 ballroom, one of those rooms -- because I know you got a
4 bunch of them, but when somebody books one of those for
5 an event, is it typical that they also get a block of
6 rooms for people to stay in your hotel?

7 A. They can. There's -- we do all kinds of rooms
8 only, meetings only, mixture of both. For these
9 particular holiday parties, it is typical to do that.

10 Q. Right. So y'all -- while the ballrooms or what
11 have you aren't in your hotel, you all take care of the
12 event planning, to some degree, for those?

13 A. Yes.

14 Q. And when people call you and say, Hey, we're going
15 to have a Christmas party, it's not unusual for them to
16 get a block of rooms?

17 A. Correct, correct.

18 MR. SMILEY: That's all I got.

19 THE COURT: Redirect?

20 MS. BALDWIN: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. BALDWIN:

23 Q. So Mr. Smiley was asking you about the service
24 elevator. So there's a door that somebody would have to
25 swipe in order to get to the elevator itself, correct?

1 A. Correct.

2 Q. And you said in response to his question that the
3 door should be locked, correct?

4 A. Correct.

5 Q. Would it be possible for an employee to not -- to
6 have propped it open?

7 A. We have had challenges where doors have swollen on
8 the bottom and get hung up so that the door doesn't
9 sometimes freely close.

10 Q. I see. So even though it should be locked, it
11 doesn't actually --

12 A. Sometimes it doesn't click shut.

13 Q. And once you get through that door, anybody can
14 access that elevator?

15 A. The elevator is there, yes.

16 Q. Okay. So on there it says -- there are different
17 types of keys, guest keys and room master keys. What is
18 the difference between the two?

19 A. Guest level keys are programmed to only access the
20 key number that it's assigned, so the lock in the room,
21 basically. Those guest keys also access public areas,
22 such as the fitness area, pool and business center on the
23 ground floor, but those programmed keys only access those
24 restricted areas. Room master keys access all locks.

25 We have different levels to security.

1 Housekeepers are given keys that work only on a certain
2 floor. Both the ones indicated on this report are room
3 masters, which actually have all clearance, all access.

4 Q. Would managers be the people who have those?

5 A. Managers, yes.

6 Q. And I know Mr. Smiley was assuming that that was
7 the police who entered the room with the room master, but
8 you don't know who entered that room?

9 A. We don't know.

10 Q. You don't know who used key 191? Is it possible
11 that Mr. Rumsey made a key for the police?

12 A. There is a possibility, yes. Based on this
13 report, you can't tell who was holding the keys.

14 MS. BALDWIN: Court's indulgence.

15 That's all I have for you. Thank you.

16 THE COURT: Recross?

17 MR. SMILEY: Nothing, Your Honor.

18 THE COURT: You may step down. Thank you so
19 very much.

20 Call your next witness.

21 MS. BALDWIN: State calls Joye McElroy.

22 JOYE McELROY,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. BALDWIN:

2 Q. What is your occupation?

3 A. I'm an emergency room nurse.

4 Q. Where are you employed currently?

5 A. St. Francis Hospital.

6 Q. Anywhere else?

7 A. I also teach nursing at ECPI University.

8 Q. Please tell the jury a little bit about your
9 education and training.

10 A. I received my bachelor degree in nursing in 1999
11 from the Medical University of South Carolina, began as
12 an emergency nurse in 2000 at Trident Hospital. I still
13 currently work in the ER, have for 17 years. In 2009 I
14 received my master's degree in nursing education so I
15 also now teach nursing students.

16 Q. And do you belong to any professional
17 associations?

18 A. Yes. I'm a member of the Emergency Nurses'
19 Association.

20 Q. And what are the nurses' duties?

21 A. We take care of any patient who presents to the
22 emergency room, which can be a pediatric patient all the
23 way through a geriatric patient, with any complaint that
24 they come in seeking medical treatment.

25 Q. Approximately how many patients do you think

1 you've treated in your career?

2 A. Thousands.

3 MS. BALDWIN: Your Honor, at this time I
4 would like to admit Ms. McElroy as an expert in the field
5 of emergency nursing.

6 THE COURT: Any objection?

7 MR. SMILEY: Yes, sir.

8 THE COURT: You want to cross-examine?

9 MR. SMILEY: May we approach?

10 THE COURT: Yes, sir.

11 (Discussion held at sidebar.)

12 All right. Mr. Foreman, ladies and
13 gentlemen: I'm going to have to listen to some testimony
14 and make a decision on some motions, and the reason I
15 send you out of the courtroom is because I'm not
16 permitted during the course of this trial to comment on
17 the facts, and in this particular situation, I may have
18 to comment on the facts, and I want to do it out of your
19 presence, so I'll be free to comment on the facts and
20 make a determination whether I should grant the motion or
21 deny the motion, and while you're out, we've been in the
22 courtroom for, it looks like, about an hour and 25
23 minutes, so we'll go ahead and take our morning break,
24 and when we finish, we'll take a morning break, so please
25 don't discuss the case among yourselves, if you'll follow

1 the bailiff to the jury room.

2 (In open court, jury not present.)

3 THE COURT: Before we start the cross on her
4 qualifications, what are you planning on doing? She's
5 not a toxicologist?

6 MS. BALDWIN: No, but I believe she has
7 treated, I would say, thousands of intoxicated people and
8 just ask what their behaviors are --

9 THE COURT: I think she can testify to what
10 her observations are, but if you're going to try to tie
11 in the alcohol level to some intoxication and mental
12 impairment, I don't think she's qualified to do that.

13 MS. BALDWIN: I don't think we are
14 specifically trying to have her say she was mentally
15 impaired, or what somebody with that level of
16 intoxication how they would be behaving, be a more
17 general line of questioning.

18 MR. SMILEY: I object, Your Honor. I
19 think -- she's an emergency room nurse. She can give a
20 general objection of this client --

21 THE COURT: I mean, she can give some general
22 observations, what she observed and how she can compare
23 it to other patients she has observed. I have no problem
24 with that, but to give her opinion on how what she
25 observed affected her mental capacity, I think she's

1 talking about toxicology. I'm not sure she's qualified.
2 She may very well be, but so far you haven't qualified
3 her for it.

4 Am I clear?

5 MS. BALDWIN: Are you saying that she could
6 say, Okay. I observed this patient was like this; I've
7 observed several other patients who were intoxicated that
8 are like this? I mean --

9 THE COURT: Yeah, I think she can do that,
10 but if she gets to the point of saying that level affects
11 the mental impairment, I think you get into toxicology.
12 I don't think she qualifies, or at least she hasn't been
13 qualified as an expert in that area. She may very well
14 be qualified. I don't know. I'm not trying to belittle
15 her, okay?

16 MS. BALDWIN: I'm not trying to elicit
17 testimony to say that this particular patient, based on
18 her blood alcohol level, was mentally impaired. That was
19 not the intent. That's not what we're trying to do.

20 MR. SMILEY: Then she would need to be
21 qualified as an expert.

22 THE COURT: That's why I was wondering why
23 she needs to be qualified at all, because my problem with
24 it, if I qualify her as an expert, then that bolsters her
25 personal observations more so than somebody else in the

1 jury's eyes, and I got a real problem with that.

2 MS. BALDWIN: We don't have to qualify her as
3 an expert. If it becomes more necessary, I'll try to
4 elicit more testimony regarding that, and we can address
5 it as we go on.

6 THE COURT: You understand my problem.
7 You're trying to give her more credibility by qualifying
8 her. All she's going to do is testify about her
9 observations, just like a layperson.

10 MS. BALDWIN: Yes, sir, and based on her
11 experience in there, but not giving a professional
12 opinion.

13 THE COURT: Yeah.

14 MS. BALDWIN: Okay.

15 THE COURT: The only time you need to qualify
16 somebody is when they're going to give an opinion, but so
17 far you told me she's not going to be giving an opinion,
18 so my question is why qualify?

19 MS. BALDWIN: In the past, it's been a little
20 bit unclear in other courtrooms, so --

21 THE COURT: I'm sorry?

22 MS. BALDWIN: I'm fine with limiting her
23 testimony.

24 MR. SMILEY: So she will not be qualified as
25 an expert. She will give her observations --

JOYE McELROY - DIRECT EXAMINATION

1 THE COURT: And she can compare those
2 observations of the patients without being qualified.
3 What I'm saying is, she can't give any opinions.

4 MR. SMILEY: Absolutely. It is based on what
5 she saw and her experience, and a layman is --

6 THE COURT: How was she impaired? Was her
7 speech slurred? Was she stumbling?

8 MR. SMILEY: She can describe what she saw,
9 but when you say, Well, compared to another patient, was
10 she more drunk or less drunk? Then you start getting
11 into --

12 THE COURT: Well, let's see what the question
13 is. I don't know how to rule on something that hasn't
14 happened.

15 MR. SMILEY: Yes, sir. I just got caught by
16 surprise by, I'm going to qualify her as an expert.
17 That's why I was surprised.

18 THE COURT: Well, if she's not going to
19 qualify her --

20 MR. SMILEY: Then we're okay.

21 THE COURT: I'm going to deny the motion to
22 qualify her, okay?

23 MS. BALDWIN: Okay.

24 THE COURT: And you go -- I can do it one of
25 two ways when the jury comes back: You can withdraw the

1 question and ask the Court to qualify her, or I can deny
2 her motion to qualify, whichever way you want to do it.

3 MS. BALDWIN: I will withdraw my question.

4 MR. SMILEY: I would ask it be done in front
5 of the jury.

6 THE COURT: That was the first thing out of
7 my mouth, was in front of the jury. Why don't you
8 listen? Listen before you start. Think about what
9 you're going to say, and then think about what you're
10 going to say after you listen. Okay?

11 We'll take a 15-minute break. Thank you.
12 Ma'am, you may step down. Thank you so very much.

13 (Recess taken.)

14 (In open court, jury not present.)

15 THE COURT: Anything from the State before we
16 bring the jury?

17 MS. BALDWIN: No, sir.

18 THE COURT: Anything from the defense?

19 MR. SMILEY: No, sir.

20 (In open court, jury present.)

21 MS. BALDWIN: I would like for the record to
22 show the State withdraws its request.

23 THE COURT: To qualify her as an expert?

24 MS. BALDWIN: Yes, sir.

25 THE COURT: Thank you very much.

1 BY MS. BALDWIN:

2 Q. Ms. McElroy, as we were discussing, you said
3 you've treated thousands of patients over time as a nurse
4 in the emergency room?

5 A. Yes.

6 Q. Were you involved in Ms. [REDACTED]'s treatment on
7 December 15 of 2013 at Roper?

8 A. Yes, I was.

9 Q. And what was your involvement with her treatment?

10 A. I came on at 7 a.m., and I was assigned to issue
11 her discharge instructions.

12 Q. And what does that involve?

13 A. When I come on shift at 10 a.m., I am assigned
14 certain patients, certain room numbers. At that time, I
15 review the charts of my patient that are under my care,
16 and in this case, the patient was up for discharge, which
17 means they had discharge orders written by the physician,
18 and it's my job to go over the discharge instructions
19 with the patient, clarify any questions, and then take a
20 last set of vital signs and discharge them from the
21 emergency room.

22 Q. So you say as part of that you review their
23 charts?

24 A. Yes.

25 Q. Their recording, including all of the nurses'

1 notes?

2 A. Yes.

3 Q. What was Ms. |. treated for?

4 A. Alcohol intoxication and a reported assault.

5 Q. Does Roper St. Francis have a sexual assault nurse
6 examiner?

7 A. No, we do not.

8 Q. What is a sexual assault nurse examiner?

9 A. It's a nurse that's specially trained in doing
10 specific components of a physical exam after a sexual
11 assault.

12 Q. What do you do if somebody reports such an assault
13 at Roper?

14 A. We would page the sexual assault nurse examiner
15 that's located at the medical university, communicate
16 with them, and the patient would be sent down for that
17 exam by that sexual assault nurse examiner.

18 Q. Okay. At any point in your review of the notes
19 did the victim ask for --

20 MR. SMILEY: Objection, Your Honor.

21 THE COURT: What is the legal objection?

22 MR. SMILEY: It's hearsay because she's
23 reading notes that she didn't take.

24 THE COURT: I'll sustain the objection.

25 BY MS. BALDWIN:

JOYE McELROY - DIRECT EXAMINATION

1 Q. What treatment did the victim receive?

2 MR. SMILEY: Your Honor, I would ask -- may
3 we approach?

4 THE COURT: Yes, sir.

5 (Discussion held at sidebar.)

6 THE COURT: What's your legal objection?

7 MR. SMILEY: Hearsay, Your Honor.

8 THE COURT: It's sustained.

9 Ladies and gentlemen: When attorneys make an
10 objection, they're not trying to hide anything from you.
11 We have certain rules of evidence, and the rules of
12 evidence are designed, hopefully, to give you the most
13 reliable testimony that you can see, and hearsay is a
14 statement made by someone outside the courtroom that's
15 not admissible by someone else other than the witness
16 testifying, and hearsay is not admissible in court.

17 When I use the words overrule the motion,
18 that means that I disagree with the attorney and evidence
19 is admissible. If I use the word sustained, it means I
20 agree with the attorney that the evidence in this
21 particular instance is hearsay, and I agree with that, so
22 just familiarize yourselves with the words sustained and
23 overruled.

24 Please proceed.

25 BY MS. BALDWIN:

1 Q. You've had a chance to review Ms. |. 's medical
2 records in this case?

3 A. Yes.

4 Q. Or her treatment at St. Francis Hospital?

5 A. Yes.

6 Q. I'm going to show you State's Exhibit 8 for ID.

7 Can you tell me what those are?

8 A. It's the documentation from the visit on 12/15/13.

9 Q. And are those records generated whenever a patient
10 is admitted to St. Francis?

11 A. Yes.

12 Q. Are those documents kept realtime?

13 A. Yes.

14 Q. You said for every patient?

15 A. Yes.

16 Q. And those are kept in the ordinary course of
17 Roper's business?

18 A. Yes.

19 Q. And you're familiar with those records?

20 A. Yes.

21 Q. You look at them every day?

22 A. Every day.

23 MS. BALDWIN: Your Honor, at this time I
24 would like to admit State's 8 into evidence.

25 MR. SMILEY: I'd object. Hearsay. Does not

1 fit exception 803(6).

2 THE COURT: All right. Let me see the
3 records.

4 MS. BALDWIN: Yes, sir.

5 THE COURT: Mr. Smiley, did you have an
6 opportunity to look at the records?

7 MR. SMILEY: Yes, I have the records. I have
8 redacted records of sorts.

9 THE COURT: Well, what I'm looking at has
10 just one redaction on it.

11 MR. SMILEY: Her address.

12 THE COURT: And apparently her date of birth.

13 MR. SMILEY: That's all I have.

14 THE COURT: All right.

15 Mr. Foreman, ladies and gentlemen: I'm going
16 to have to ask you to go back to the jury room. Don't
17 discuss the case amongst yourselves, please.

18 (In open court, jury not present.)

19 THE COURT: I heard what she said. She said
20 she was familiar with them. She used them every day.

21 I guess my question to you, how does that
22 qualify her by saying that these are the actual records
23 that are kept by local hospital? How does the custodian
24 of records testify as a qualified witness? I'm not sure
25 she's qualified to say if these are the records on this

1 particular lady on the night in question unless she knows
2 of her own knowledge.

3 MS. BALDWIN: I thought she did. I thought
4 she said those are generated realtime when patients are
5 being treated and those are the records of Ms. |. .

6 THE COURT: And those were her records. She
7 knows that of her own knowledge? I may have missed it.

8 MS. BALDWIN: That's what I asked her. I can
9 ask her again.

10 THE COURT: Please do.

11 BY MS. BALDWIN:

12 Q. Are those Ms. |. 's records?

13 A. Yes.

14 Q. And you're familiar with Ms. |. 's records?

15 A. Yes.

16 Q. And those are the records Roper St. Francis keeps
17 for that particular patient, Kayla |. ?

18 A. Yes.

19 THE COURT: All right. Mr. Smiley, why don't
20 you think it's admissible based upon the nurse's
21 testimony under the business record exception? I'll give
22 you the opportunity to redact any opinions or any
23 subjective opinions of judgments that are in the record.
24 I haven't had a chance to look at them, but I'm going to
25 give you an opportunity to do that.

JOYE McELROY - CROSS-EXAMINATION

1 MR. SMILEY: Yes, sir.

2 THE COURT: But why are they admissible,
3 based on this lady as a qualified witness knowing these
4 are the victim's medical records that she discharged on
5 the date in question?

6 MR. SMILEY: Can I voir dire her about how
7 she knows?

8 THE COURT: Yeah, yeah. I'll be glad to
9 listen before I make a decision. And, Solicitor, I don't
10 want to cut you off. Anything else you want to ask her
11 in reply, feel free, okay?

12 MS. BALDWIN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. SMILEY:

15 Q. Nurse McElroy, Jim Smiley. I represent Stewart
16 Middleton. How many pages of records were produced for
17 Kayla | ?

18 A. Number of pages?

19 Q. Yeah.

20 A. I didn't count them.

21 Q. How can you tell that the records you reviewed are
22 the total records of what happened that night?

23 A. Because it's in chronological order from the time
24 she came until she left, and I was the last nurse to
25 document in the chart.

1 Q. Do you have the records in front of you?

2 A. I do not at this time.

3 THE COURT: Somebody -- Solicitor, give her a
4 copy of the record, please.

5 MS. BALDWIN: May I approach the witness?

6 THE COURT: I just told you to give her a
7 copy.

8 BY MR. SMILEY:

9 Q. Tell me, what is page one of the record for Kayla
10 |. ? What is the first thing that's recorded?

11 A. When a patient first comes in, we do what's called
12 a triage where we get chief complaint, history, primary
13 doctor, and other documentation.

14 Q. And where is that located?

15 A. Well, it gives her name and demographics at the
16 very top, and then it goes into the history of the
17 present illness, which is what HPI stands for, and then
18 it continues from there with her history.

19 Q. That's page one, and then there's a time stamp as
20 anything is done; is that correct?

21 A. There is a time stamp that comes from the nurses'
22 documentation when they document, yes.

23 Q. So there's one, two -- make sure we understand
24 that, because there's two pages of that documentation
25 with a third signature page; is that correct?

1 A. That's the physician documentation, and it says
2 that on the top.

3 Q. So this is what the doctor does, when you say
4 physician document information?

5 A. Correct, two pages.

6 Q. So the doctor did those two pages?

7 A. The nurses' notes start on page four of -- I'm
8 sorry, page five, where it says nurses' note on the very
9 top.

10 Q. All right. And the nurses' notes go back to the
11 very beginning; is that correct?

12 A. To the time that she came in at 0035.

13 Q. Okay. And those notes go for three pages; is that
14 correct?

15 A. That is correct.

16 Q. Is there any further records you reviewed?

17 A. At the time of the visit?

18 Q. You've got her records, and I'm just trying to
19 figure out, what do you have? We've got a doctor's
20 documentation that's three pages. We've got some nurse
21 notes that's three pages.

22 A. Then we have an EMS record. That is the next four
23 pages.

24 Q. Let me make sure that -- is that what you have in
25 the top right-hand, encounter summary?

1. A. Yes, sir.

2 Q. And that's not created by the hospital, that's
3 created by EMS?

4 A. Correct.

5 MS. BALDWIN: Just for the record, Your
6 Honor, I don't believe I was trying to introduce the
7 encounter summary or the EMS report.

8 THE COURT: Well, what are you trying to have
9 introduced?

10 MS. BALDWIN: Just the records directly from
11 Roper.

12 THE COURT: From the doctor or the nurses'
13 notes?

14 MS. BALDWIN: It's the entire record, the
15 nurses' notes plus what the doctor treated her for, what
16 Mr. Smiley went for initially.

17 THE COURT: Not the EMS?

18 MS. BALDWIN: No, sir, and that's not the
19 exhibit I handed up to you.

20 MR. SMILEY: I'm just making sure, Judge.

21 THE COURT: I understand. Thank you,
22 Solicitor.

23 MS. BALDWIN: You're welcome.

24 BY MR. SMILEY:

25 Q. Now, does the only thing that those six pages --

1 MS. BALDWIN: Including the toxicology
2 report.

3 THE WITNESS: The lab report.

4 MS. BALDWIN: The lab report, my apology.

5 Through the nurses' notes, where she does
6 sign off at the end, it lists all the nurses. I believe
7 that's all in there.

8 MR. SMILEY: Your Honor, I have an
9 objection -- well, I'm going to get, first, to all the
10 records, and then I'll tell you --

11 BY MR. SMILEY:

12 Q. So the first three pages are physicians'
13 documentation. The next would be the nurses' notes,
14 correct?

15 A. Correct.

16 Q. They're three pages. Next thing is a toxicology
17 report, correct?

18 A. The chemistry report.

19 Q. The chemistry report, and what you actually did
20 with her, the last thing you signed, would be her
21 discharge, right?

22 A. I review the entire record with the patient. This
23 is what I actually have her sign at the very end saying
24 she understands her discharge instructions.

25 Q. So you said you read all six pages to her?

1 A. I review it with her for any questions. I didn't
2 read it to her, no, sir.

3 Q. So when you check out of the hospital, you're
4 telling me she's getting a copy of her physician's notes?

5 A. No, sir, I didn't say that. I said I reviewed it
6 with her rather than I gave it to her. She gets
7 discharge instructions.

8 Q. Right, and this is what she got, right, that you
9 signed and she signed?

10 A. No. She actually received a set of instructions,
11 general instructions. On this page it says exactly what
12 instructions she received.

13 Q. And that's what you prepared with her, correct?

14 A. Yes, but she got more than this piece of paper.
15 She actually received the preprinted instructions.

16 Q. So there's other records that aren't in what you
17 got?

18 A. It's not -- it's generic instructions that are
19 provided to a patient on that topic.

20 Q. Okay.

21 MR. SMILEY: Your Honor, I --

22 THE COURT: Go ahead with your questions, and
23 then the solicitor may have some questions. I'll listen
24 to arguments. I'm not going to rule until y'all finish.
25 Take your time. I mean, we got all week.

1 BY MR. SMILEY:

2 Q. So you came on at 7:00 in the morning?

3 A. Correct.

4 Q. You got Ms. [REDACTED]'s chart, I guess is what you
5 would call it nowadays. It's --

6 A. Electronic.

7 Q. Her electronic chart.

8 A. Right.

9 Q. You read through it, and that would be the
10 physicians' notes, the nurses' notes. The toxicology
11 screen, would you have read that?

12 A. Yes. Reviewed all her lab work, any lab work that
13 was done.

14 Q. Okay. And then you give her the generic
15 instructions and y'all sign off?

16 A. And we review and I clarify any questions before
17 she is provided treatment.

18 Q. So how long did you -- you read these notes. How
19 long -- is that a fairly quick process?

20 A. Depending on the length of a patient's chart.

21 Q. In this case, how long did you review the notes?

22 A. Probably ten, fifteen minutes.

23 Q. And then you spoke with her?

24 A. Correct.

25 Q. Okay. You spent a few minutes with her going over

1 the notes to have her sign the discharge summary.

2 A. Right.

3 Q. And she signed the discharge summary at 7:40?

4 A. Correct.

5 Q. All right. You documented that on that?

6 A. Right.

7 MR. SMILEY: That's all the questions I have.

8 THE COURT: Anything you want to ask,
9 Solicitor, of this witness on the issue of business
10 records?

11 MS. BALDWIN: Just one last one, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. BALDWIN:

14 Q. So in reviewing the records, part of that review
15 was you said all the lab reports. That would also have
16 been the ethenol chemistry report?

17 A. Yes.

18 MS. BALDWIN: That's it. Thank you.

19 THE COURT: All right. Do you have any
20 objections to the admissibility of the records? I
21 understand the doctors' notes and the nurses' notes are
22 what's being offered. Do you have an objection?

23 MR. SMILEY: I do not if they're redacted as
24 to any subjective --

25 THE COURT: I haven't gotten the redaction,

1 but do you think they have sufficiently proved that they
2 are valid business records of Roper Hospital through
3 their qualified witness?

4 MR. SMILEY: Yes, I do.

5 THE COURT: Now, let's talk about -- I want
6 to give you the opportunity to look at it and see what
7 you think needs to be redacted, okay? How much time do
8 we need to do that?

9 MR. SMILEY: Ten minutes.

10 THE COURT: Well, you tell me. I'm not
11 trying to hurry you.

12 MR. SMILEY: Six pages.

13 THE COURT: I'll take a break. Let me know
14 when y'all are ready to come back, or maybe the two of
15 you can agree, okay? All right?

16 MS. BALDWIN: Your Honor, I just want to make
17 sure included in that exhibit should be the chemistry
18 report that shows the blood alcohol level of the blood
19 draw. It should be the last page. We did ask her about
20 it. It says chemistry in bold letters. That was part of
21 what we asked her about.

22 THE COURT: You want to admit this also?

23 MS. BALDWIN: Yes.

24 THE COURT: They're also asking to add the
25 chemistry report. Do you understand?

1 MR. SMILEY: Yes, sir, and I object to that.

2 THE COURT: Okay. Well, I understand. Can
3 y'all sit down for 15 minutes to see what needs to be
4 redacted? If you can't agree, I'll do it myself. Okay?
5 There may be nothing that needs to be redacted. I
6 haven't read it yet.

7 We'll take about a 15-minute break.

8 (Recess taken.)

9 MR. SMILEY: After talking with Mr. Evans and
10 Ms. Baldwin, I'm not going to object to the three pages
11 of doctors' notes, no redaction, three pages of nurses'
12 notes and no redaction, and the one-page chemistry
13 report; however, if she tries to offer an opinion on that
14 report, I will object.

15 THE COURT: All right. Are you ready to
16 proceed yet? You're not going to ask for an opinion
17 about the alcohol, are you?

18 MS. BALDWIN: I was just going to ask what it
19 was.

20 THE COURT: Well, we offered that previously,
21 okay? So you're withdrawing your objection?

22 MR. SMILEY: I would. I believe they meet
23 the business exception, not that I would withdraw. I
24 believe they meet the exception, and I would not ask for
25 any redaction.

1 THE COURT: Okay. Do you want to do this in
2 front of the jury or --

3 MR. SMILEY: The State has more questions for
4 her, but as far as these reports go --

5 MS. BALDWIN: As far as these records go, I
6 think they can be entered.

7 THE COURT: All right. Bring the jury.
8 (In open court, jury present.)

9 THE COURT: Thank you very much. You may
10 proceed with your direct examination.

11 MS. BALDWIN: Thank you, Your Honor.

12 THE COURT: You're going to offer State's
13 Exhibit what?

14 MS. BALDWIN: State's Exhibit 8.

15 THE COURT: That's admitted without
16 objection.

17 MS. BALDWIN: Thank you, Your Honor.

18 (State's Exhibit 8 was marked for
19 identification and admitted into evidence.)

20 BY MS. BALDWIN:

21 Q. I'll hand these up to you, Ms. McElroy. So you
22 stated Ms. [] was treated for alcohol intoxication and
23 assault?

24 A. That's correct.

25 Q. What treatment did she receive while she was at

1 Roper?

2 A. She had vital signs done on multiple occasions as
3 well as a Glasgow coma scale, and she also had blood work
4 down for lab analysis.

5 Q. Okay. And what -- why was her blood analyzed?

6 A. We drew a blood alcohol level because the patient
7 was requesting to be discharged from the ER and leave and
8 did not have a responsible ride, so we do that to make
9 sure they're safe to go.

10 Q. When you say she didn't have a responsible ride,
11 what is that about?

12 A. Any time a patient is in the ER and intoxicated
13 we, just can't let them go of their own accord. They
14 have to have a responsible party to take them home, and
15 she was unable to find one.

16 Q. And what was the result of Ms. [REDACTED]'s test?

17 A. Her blood alcohol level was 264 milligrams per
18 deciliter.

19 Q. And I think we all hear about driving and the
20 legal limit, what --

21 MR. SMILEY: Objection, Your Honor.

22 THE COURT: Overruled.

23 BY MS. BALDWIN:

24 Q. So on a blood alcohol content, a BAC, what does
25 that translate into?

1 A. .264.

2 Q. And what is the toxic range?

3 A. .3, 300 milligrams per liter.

4 Q. What time did Ms. | arrive at the hospital per
5 the medical records?

6 A. 0035.

7 Q. Is that 12:35 a.m.?

8 A. Correct.

9 Q. And what time was her blood drawn?

10 A. 0338, 3:38 a.m.

11 Q. So what happens over time with your blood alcohol
12 level?

13 MR. SMILEY: Objection, Your Honor.

14 THE COURT: Overruled.

15 THE WITNESS: Healthy adult's blood alcohol
16 decreases over time when they're still not consuming
17 alcohol.

18 BY MS. BALDWIN:

19 Q. And that's in your experience?

20 A. Yeah.

21 THE COURT: Move on.

22 BY MS. BALDWIN:

23 Q. How many intoxicated people have you treated?

24 A. At least 1,000.

25 Q. Okay. In your experience -- well, in your

1 experience, what do intoxicated people -- what sort of
2 symptoms do they exhibit?

3 A. They can have anything from slurred speech,
4 unsteady movement, unsteady gait, all the way to loss of
5 consciousness. They can have physiological symptoms like
6 nausea and vomiting, dizziness.

7 Q. I believe there are several nurses' notes. Third
8 page, it says nurses' notes continued?

9 A. Yes.

10 Q. At any point -- do you see where I'm looking?

11 A. Uh-huh.

12 Q. And the nurses' notes, what are those?

13 A. That's a nurse's documentation of what she
14 observed, what she measures, what the patient may say or
15 do.

16 Q. And if you look at those nurses' notes, were there
17 any items retrieved for the patient in this particular
18 case?

19 A. Personal items?

20 Q. Yes.

21 A. Yes. At 1:10, the nurse called the hotel to
22 retrieve the patient's phone and purse from her room.

23 Q. And that's 1:10 a.m.?

24 A. Correct.

25 Q. And she requested that. What was the result of

1 that, according to those notes?

2 A. They were sent with the concierge from the Embassy
3 Suites.

4 Q. And they were taken from her room?

5 A. Correct.

6 Q. And according to those nurses' notes, did the
7 victim at any point request a -- we mentioned this, a
8 SANE examine, or sexual assault nurse examiner, did she
9 ever request that?

10 A. Yes, 2:39 a.m.

11 Q. And I guess -- did she get that kit done then?

12 A. No, she did not.

13 Q. Okay. What happened?

14 A. At -- we did page the SANE nurse, followed the
15 procedure for that, and then the patient just stated she
16 wanted to go home, and she didn't want to have the exam
17 done.

18 Q. Did she say why?

19 MR. SMILEY: Objection, Your Honor.

20 THE COURT: Overruled.

21 MS. BALDWIN: According to those notes.

22 THE COURT: I'll sustain that objection.

23 MS. BALDWIN: Beg the Court's indulgence.

24 I have no further questions for you.

25 THE COURT: Cross-examination.

RECROSS-EXAMINATION

BY MR. SMILEY:

Q. I introduced myself, but I'll do it again in front of the jury. Jim Smiley. I represent Stewart Middleton, and you got State's Exhibit No. 8, I think it is, in front of you?

A. Correct.

Q. And that exhibit is the three pages of doctors' notes, correct?

A. Correct.

Q. Three pages of nurses' notes, correct?

A. Yes, correct.

Q. And a lab report, correct?

A. Correct.

Q. All right. For the jury, the doctors' notes, they're kept realtime, online, right?

A. Correct.

Q. Used to be the doctor would handwrite everything and it was later transcribed, but you now can read it right now?

A. Yes. We have digital medical records.

Q. The doctor records his notes, and if there are several doctors, they all record in the same chart, correct?

A. Correct.

1 Q. And the same thing goes for nurses, correct?

2 A. Correct.

3 Q. They record down any pertinent information in
4 realtime, and it's saved, so these three pages of
5 doctors' notes and nurses' notes are what were created
6 during Ms. Kayla [REDACTED]'s stay on 12/13 -- excuse me,
7 12/14 and 15, 2013, correct?

8 A. Yes, sir.

9 Q. All right. You came on shift at 7 a.m., right?

10 A. Correct.

11 Q. At that point in time, you had had -- you came on,
12 you hadn't had any interaction with Ms. [REDACTED], correct?

13 A. Correct.

14 Q. Your period of interaction with Ms. [REDACTED] was to
15 do her discharge, correct?

16 A. Correct.

17 Q. Now, the doctor ordered her discharge at 7:37 in
18 the morning, correct?

19 A. I see his note from 7:33.

20 Q. Okay. 7:33. In the nurses' note, it says
21 outcome, looking at page three of the nurses' notes?

22 A. Right.

23 Q. Y'all record it at 7:37 that the doctor said, Hey,
24 discharge her, correct?

25 A. Correct.

1 Q. All right. And then you were the one that
2 actually did the discharge?

3 A. Correct.

4 Q. So you hadn't had any contact with Ms. [] until
5 then, correct?

6 A. No, sir. I became the nurse at 7 a.m. so --

7 Q. So you had checked in on her?

8 A. Right.

9 Q. Okay. So doctor says at 7:37, 7:33, She can leave
10 now, and you go in and do her discharge summary and go
11 over things with her at 7:44, right?

12 A. Correct.

13 Q. And she leaves at 7:46?

14 A. Correct.

15 Q. So you spent two minutes going over things with
16 her?

17 A. I began my documentation at 7:44. I don't
18 document when I give instructions to a patient, so I
19 would have been in a few minutes before then and then
20 documented it at 7:44.

21 Q. But it certainly would have been after 7:37?

22 A. Correct.

23 Q. All right. Now, you had a chance to review these
24 notes, correct?

25 A. Yes, sir.

1 Q. Let first look at the doctors' notes. I believe
2 you testified that she was there because she was -- had
3 too much alcohol, or alcohol intoxication, and she had
4 said she been assaulted, correct?

5 A. Correct.

6 Q. In the doctors' notes, could you find where
7 Ms. [] said she had been assaulted?

8 A. In the physicians' notes?

9 Q. Yeah, in the physicians' notes or the nurses'
10 notes where it says she complains of being assaulted.

11 A. Well, the nurses' note, it says, Patient states
12 she does not know if she had been assaulted.

13 Q. Okay.

14 MS. BALDWIN: Your Honor, may I objection?

15 THE COURT: What's your legal objection?

16 MS. BALDWIN: I would just like for him to
17 let the witness finish her answer.

18 THE COURT: All right. Let her finish her
19 answer.

20 THE WITNESS: I was going to say, in the
21 physicians' notes, I again have offered a SANE exam due
22 to the uncertainty regarding the events of the evening
23 and the possibility of assault.

24 BY MR. SMILEY:

25 Q. But that's not my question. My question was,

1 where in the nurses' notes or the physicians' notes does
2 it show that she complained of assault?

3 A. Besides what I read to you, I don't see anything
4 else.

5 Q. So it doesn't say in a positive statement that she
6 complained of an assault.

7 A. No, it does not.

8 Q. In fact, she did not want to have a sexual assault
9 exam done, correct?

10 A. At 2:38 a.m., she did request a sexual assault --

11 Q. And then shortly after that declined.

12 A. Correct.

13 Q. All right. Now, what time was her blood taken to
14 determine her alcohol level?

15 A. At 0338, 3:38 a.m.

16 Q. But for us laymen, that's right after midnight?

17 A. No, sir, 3:38 a.m.

18 Q. All right. So she was admitted to the hospital at
19 what time?

20 A. 12:35 a.m.

21 Q. 12:35, and three hours later was the first time
22 that her alcohol was tested?

23 A. Correct.

24 Q. And it was tested because she wanted to leave and
25 she didn't have a ride and so y'all do the standard

1 tests?

2 A. Correct.

3 Q. All right. Now, you made a reference to a scale.
4 What is that, a Glasgow scale, was it?

5 A. Glasgow coma scale.

6 Q. Yeah, and explain to the jury what that is.

7 A. That is -- we test three different things, eye
8 response, verbal response, and motor response from the
9 patient, so it's assessing their level of consciousness.

10 Q. All right. And that's one of those things that is
11 to test for level of consciousness, and it's a scale. So
12 what's a good number?

13 A. 15 is a good number.

14 Q. If you're conscious, interacting, good eye
15 function, you should have a 15, correct?

16 A. If you're conscious, yes.

17 Q. And at 12:40 in the morning, right, shortly after
18 she got to the hospital, a Glasgow coma score was done on
19 her, correct?

20 A. Right.

21 Q. And her score was what?

22 A. 15.

23 Q. So it was normal?

24 A. It means she was conscious, yes.

25 Q. When she arrives at the hospital, y'all collect a

1 social history from her?

2 A. Yes.

3 Q. Can you tell from your notes and looking at the
4 nurses' notes and the doctors' notes, you could tell she
5 arrived by EMS, correct?

6 A. Correct.

7 Q. All right. Can you tell if she had anybody with
8 her? And I'm talking about friend or family member. It
9 appears she was alone, right?

10 A. Yes.

11 Q. The social history that was gathered when she
12 first got there, right, that would have come from her?

13 A. Correct.

14 Q. First looking at the doctors' notes -- and I would
15 assume when you get the social history and that kind of
16 thing, that's part of the triage?

17 A. Correct.

18 Q. The beginning?

19 A. Correct.

20 Q. And, like, allergies, she would have been the one
21 to say, No known allergies, correct?

22 A. Correct.

23 Q. And what home meds she was taking, she would have
24 been the one to communicate that she takes Ativan orally
25 daily, correct?

1 A. Yes.

2 Q. And what does PMHX stand for?

3 A. Past medical history.

4 Q. Okay. Past medical history, she would have
5 reported anxiety, correct?

6 A. Correct.

7 Q. So she had a past anxiety disorder?

8 A. Medical history of anxiety.

9 Q. And what does PSH mean?

10 A. Past surgical history.

11 Q. And what does ACL mean?

12 A. ACL repair surgery.

13 Q. Knee, correct? Okay. Make sure I was right about
14 that. And she provided -- now, this is right when she
15 comes to the hospital, correct?

16 A. Correct.

17 Q. She reported to them that her primary care
18 physician was Jeremy Ackerman, correct?

19 A. Correct.

20 Q. And then under social history, we've got -- she
21 denies that she's ever smoked tobacco, correct?

22 A. Correct.

23 Q. And that she uses alcohol on a social basis?

24 A. Correct.

25 Q. That the patient reports recent binge of alcohol

1 consumption, correct?

2 A. Yes.

3 Q. Alcohol consumption, street drugs, and marijuana,
4 right?

5 A. That's what it says, yes.

6 Q. And that would have been provided by Ms. I. ,
7 correct?

8 A. Correct.

9 Q. All right.

10 MR. SMILEY: Beg the Court's indulgence.

11 BY MR. SMILEY:

12 Q. Going back to that Glasgow coma score, that was
13 done at 12:40, which would have been right around or in
14 conjunction with gathering her medical history?

15 A. Correct.

16 Q. And right under that, what does MVM stands for?

17 A. I'm sorry. Where are you?

18 Q. Physicians' notes, the second page where the
19 Glasgow coma score is.

20 A. I'm not sure what MVM means.

21 Q. Okay. In the Glasgow coma score, first thing you
22 look at is eye response, right?

23 A. Right.

24 Q. And spontaneous gets a four, correct?

25 A. Correct.

1 Q. And her response was spontaneous. She didn't have
2 a problem with not responding.

3 A. Correct.

4 Q. And then the next thing is you ask her questions,
5 right, or talk to her and see if she gives a verbal
6 response? Is that how that works?

7 A. Correct.

8 Q. And the highest you could get there is from one to
9 five would be five, oriented, right?

10 A. Correct.

11 Q. And so at 12:40 in the evening, she had
12 spontaneous eye movement and her verbal responses were
13 oriented, meaning she could answer the question, correct?
14 Is that what verbal response means?

15 A. We check by orientation knowing who she is, where
16 she is, and what the date is.

17 Q. And then motor response, where you ask her to do
18 something and she does it --

19 A. Follow commands, right.

20 Q. And she got a six there, right?

21 A. Correct.

22 Q. So she was alert and oriented at 12:40.

23 A. Yes.

24 MR. SMILEY: That's all I have.

25 THE COURT: Any redirect?

1 MS. BALDWIN: No, Your Honor.

2 THE COURT: You may step down. Thank you
3 very much.

4 MR. EVANS: May we approach for scheduling?

5 THE COURT: Yes, sir.

6 (Discussion held at sidebar.)

7 THE COURT: All right. Mr. Foreman, ladies
8 and gentlemen: I'm going to have to listen to another
9 motion that's concerning the next witness, and it will
10 probably take me 30, 45 minutes to do that, so I'm going
11 to excuse you all today because I told you yesterday
12 we're going to stop at 1:30, and I am going to stop at
13 1:30, but y'all are going to stop about 10 minutes to
14 1:00.

15 Please don't discuss the case with anyone.
16 I'll see you tomorrow morning at 9:30. Have a good
17 evening.

18 (In open court, jury not present.)

19 THE COURT: Mr. Smiley, my apologies to you.
20 I thought you said we going to finish today.

21 MR. SMILEY: That's what I was trying get to.

22 THE COURT: Okay. All right. What was the
23 confession? What did he say on the video?

24 MR. EVANS: In summary, Your Honor, he
25 tells -- his version of the events is that he is leaving

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1 not testify.

2 Do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Thank you all very
5 much. All right. See you at 9:30 in the morning.

6 (Recess taken.)

7 (October 25, 2017.)

8 (In open court, jury present.)

9 REBECCA BAILEY,

10 having been first duly sworn,

11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. EVANS:

14 Q. Good morning. How are you?

15 A. Thanks. How are you?

16 Q. I'm doing pretty good, thank you. Where are you
17 currently employed?

18 A. North Charleston police department.

19 Q. What's your position at the North Charleston
20 police department?

21 A. I'm a detective with the special victims unit.

22 Q. How long have you been in the special victims
23 unit?

24 A. Since 2013.

25 Q. Where were you assigned before you got to SVU?

1 A. Property division.

2 Q. How long have you been in North Charleston in
3 total?

4 A. Thirteen years.

5 Q. Were you on the road before you became a
6 detective?

7 A. I was.

8 Q. For how long?

9 A. Three or four years.

10 Q. Do you recall the legal driving limit for blood
11 alcohol?

12 MR. SMILEY: Objection, Your Honor.

13 THE WITNESS: .08.

14 MR. SMILEY: Objection.

15 THE COURT: Come up here.

16 (Discussion held at sidebar.)

17 All right. I'll sustain the objection.

18 BY MR. EVANS:

19 Q. Detective Bailey, what kind of cases are SVU
20 cases?

21 A. Typically, sexual assault cases against children
22 and adults, and then we also work physical abuse cases
23 and neglect cases against children and vulnerable adults.

24 Q. What are your duties investigating those cases?

25 A. Well, when they're assigned, we start off by

1 reviewing any initial reports, like a police report or
2 incident report, speaking to people that have done -- the
3 potential suspect, any witnesses, anybody who might have
4 something to add to a case.

5 We collect evidence, like video surveillance
6 footage, forensic interview reports, forensic interview
7 videos, pertinent documentation, like medical reports,
8 forensic interview reports, and things of that nature,
9 review all that, and at the end of the day, we decide if
10 an arrest is going to be made and the appropriate
11 charges.

12 Q. How did you come to be involved in this case?

13 A. It was assigned.

14 Q. Okay. So it was just assigned to you, kind of in
15 the normal course of your duties?

16 A. Correct.

17 Q. When you got assigned this case, did you review
18 the incident report?

19 A. I did.

20 Q. Who had initially taken the incident report?

21 A. Officer Johnson.

22 Q. Okay. Do you know if Officer Johnson is still
23 employed at North Charleston?

24 A. He's not.

25 Q. Was there any other detective who had been

1 involved before you?

2 A. Not to my knowledge.

3 Q. Okay. Nobody took a statement from the victim
4 before you were assigned to it?

5 A. Oh, I'm sorry. I thought you meant on scene.
6 Yes. On the 16th, Detective Repman took a statement.

7 Q. Was Detective Repman an SVU detective?

8 A. No.

9 Q. Do you know where he is now? Is he still in North
10 Charleston?

11 A. He's not.

12 Q. Do you know where he lives?

13 A. I think in North Carolina.

14 Q. Had much investigation been done before you had
15 been assigned to it?

16 A. No.

17 Q. Okay. And you reviewed the incident report,
18 correct?

19 A. I did.

20 Q. Do you recall -- does the incident report state
21 what time the 911 call was made?

22 A. It states what time the call was dispatched to the
23 officer.

24 Q. Okay. Do you recall what time that was?

25 A. 11:38 p.m.

1 Q. And does it also state what time officers arrived
2 on scene?

3 A. It does. It was right around the same time, I
4 think, 11:38 p.m., or 11:39.

5 Q. Who did you speak to in the course of your
6 investigation in this case?

7 A. I spoke to several people. I spoke to the victim,
8 Kayla [REDACTED]. Her last name was [REDACTED] at the time, [REDACTED]
9 now. I spoke to Mr. Rumsey, Mitchell Rumsey who you met
10 the other day. He was the front desk clerk at the hotel
11 the night of the incident. I spoke to Mr. Delis after
12 him. Mr. Delis is Mr. Rumsey's supervisor at the hotel.
13 I spoke to Jimmie Filbeck, who is a coworker of the
14 victim and the defendant in 2013. I spoke to Mr. Green,
15 first name Alphonso. He's a friend of the victim's, and
16 then I spoke with the defendant, Stewart Middleton.

17 Q. And Mr. Green, is he actually law enforcement?

18 A. He is.

19 Q. Do you know what agency he works for?

20 A. I think Charleston County.

21 Q. So that's not the agency that would have
22 investigated this case?

23 A. No.

24 Q. Did you collect any evidence from the employees of
25 the Embassy Suites?

1 A. Yeah. Mitchell Rumsey brought in a VHS tape,
2 which contained video surveillance footage from the lobby
3 or the front desk area, and he also brought in a key card
4 transaction report for the victim's hotel room.

5 Q. For Room 403?

6 A. Correct.

7 Q. Did you review the surveillance tape?

8 A. I did.

9 Q. How would you describe the surveillance tape?

10 A. Very poor.

11 Q. Specifically, I mean, how did it look?

12 A. It was a VHS tape, first of all, so I don't think
13 anyone has seen those in quite a while, and then it was
14 really grainy, like when you're watching TV and it goes
15 fuzzy, and that was pretty much what it looked like, so
16 it was very poor.

17 Q. So you took witness statements from most of the
18 witnesses involved in the case?

19 A. Yes.

20 Q. And you mentioned you interviewed the defendant at
21 one point?

22 A. I did.

23 Q. How many times did you schedule an interview with
24 him?

25 A. I think the first --

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1 MR. SMILEY: Objection, Your Honor.

2 THE COURT: What's your legal objection?

3 MR. SMILEY: Relevance.

4 THE COURT: Overruled. Go ahead.

5 THE WITNESS: First time I made contact with
6 the defendant, I want to say it was February 3rd. Don't
7 quote me, around there, the 3rd, 4th. I know it took
8 about 17 to 20 days for him to come in. He didn't show
9 for the first two. He would call after the fact, or,
10 like, 24 hours later. Then -- because we were having
11 such a difficult time getting him to actually stick to an
12 appointment and come in, I told him, Go home. Look at
13 your schedule. Find a day that suits you and your place
14 of employment, and then call me and you tell me what day
15 you want to come in, and I'll accommodate -- whatever
16 day, whatever time, I'll accommodate you.

17 So he left city hall, and he never called me
18 back. So I had to reach out to him again. It was 12 or
19 13 days after not hearing from him, and then we finally
20 met on February 20th.

21 Q. So it was February 20 when you finally got to
22 interview him?

23 A. Yes.

24 Q. Was he in custody at the time you interviewed him?

25 A. He was not.

1 Q. Where was that located, the interview?

2 A. City hall.

3 Q. Did you provide him with an advisement of his
4 rights?

5 A. Yes.

6 Q. And did he indicate to you that he understood
7 those rights?

8 A. He did.

9 Q. And did he indicate to you that he wished to waive
10 those and speak with you?

11 A. Yes.

12 Q. So at that point, he told you his version of what
13 happened?

14 A. Yes.

15 Q. Can you summarize kind of for the jury what his
16 statement was regarding the night of the incident?

17 A. Yeah. So the defendant said that he attended a
18 Christmas party at the Embassy Suites on December 14,
19 2013. He said this party was to start around 6:00,
20 6:30-ish. He got there around 9:00, and people were
21 already leaving at that time. There were still people
22 there, so, you know, he went in, he mingled with people,
23 and he was told by everybody that Kayla, the victim, had
24 been drinking all day and was wasted and hammered and had
25 to be carried back to her hotel room by some guy named

1 Jimmie, who you all met the other day.

2 He told me before he got to the party he
3 hadn't consumed any alcohol at all, and while he was
4 there, he had two beers. He said he danced a little bit
5 by himself, spoke to some more people, who again were
6 talking about Kayla, how wasted she was, and when it was
7 nearing about 10 p.m., he says, It's damn near 10 o'clock
8 and no one has 'seen Kayla, finds out what her room number
9 is from someone at the party, and says, I'm going to go
10 check on her to make sure she's all right.

11 When he's en route to Kayla's, room he runs
12 into Mr. Filbeck, Jimmie Filbeck, who you met the other
13 day, and his wife.

14 They get on the elevator. They all go to the
15 fourth floor, and when they got off the elevator, he says
16 there's some conversation between him and Mr. Filbeck and
17 Mr. Filbeck's wife, like, Oh, you're here to check on
18 Kayla? I'm here to check on Kayla. I guess we're all
19 here to check on Kayla.

20 So they all proceed down to Kayla's room,
21 403, and he said that Jimmie knocked on the door. He
22 didn't get an answer from Kayla, so Jimmie used the key
23 he had and opened the door, and when he did, Kayla was
24 completely nude. So defendant said he was kind of
25 shocked, ran out of the room. Jimmie and his wife ran

1 out of the room, and they all got back on the elevator.

2 He made a comment about -- they got back on
3 the elevator, but the victim was coming up right behind
4 him, saying, Oh, Jimmie. I'm so sorry. I'm so sorry you
5 saw me like that, and while they're on the elevator, he
6 says -- he explains -- the elevator, it's partially glass
7 and that he can see Kayla outside of her room, and he
8 says to Jimmie -- pardon my language, I'm quoting here --
9 Oh, shit, Jimmie, she's outside.

10 So he then says he gets off the elevator, but
11 Jimmie and his wife do not. Of course I asked him why
12 would Jimmie not get off the elevator? Jimmie is the one
13 that was going to make sure she was okay to begin with,
14 and he said his wife was -- again, I believe the word he
15 used was shitting and was mad that he wanted to go check
16 on her, so Jimmie left.

17 He gets off the elevator. He goes back to
18 the victim, who he says is in the hallway. Are you
19 locked out of your room? She says, Yeah, I am. He says,
20 I'm going to go get you a key. He goes down to the front
21 desk where he met up with Mr. Rumsey again and says --
22 tells him, I'm Kayla's boyfriend, which he wasn't and
23 never was. She's locked out of her room. I need a key
24 to help her back in. He gets the key --

25 MR. SMILEY: Your Honor, the narrative -- at

1 this point, she's not saying just what my client said.
2 She's now interpreting what he said also. It's a
3 narrative.

4 MR. EVANS: I can try and ask her some
5 questions, Your Honor.

6 THE COURT: Well, are you going to -- are you
7 planning on using the video?

8 MR. EVANS: I do, Your Honor.

9 THE COURT: Is this the summation of a video?

10 MR. EVANS: Yes, sir.

11 THE COURT: Then why are you going into the
12 whole merit? The video will speak for itself.

13 MR. EVANS: I want to introduce it --

14 THE COURT: I'm sorry, not the video.

15 MR. EVANS: I'll introduce it.

16 THE COURT: How about ask her some questions
17 so we don't have to listen to it twice, okay?

18 MR. EVANS: Yes, sir. May I approach the
19 witness, Your Honor?

20 THE COURT: Yes, sir.

21 BY MR. EVANS:

22 Q. Detective Bailey, I'm handing you what's been
23 marked for identification purposes as State's Exhibit 6.
24 Do you recognize that?

25 A. I do.

1 Q. What's that?

2 A. That's the CD of my interview with the defendant.

3 Q. On February 20th?

4 A. Yes.

5 Q. And is that a fair and accurate representation of
6 the interview you conducted that day?

7 A. It is.

8 MR. EVANS: Your Honor, at this time I would
9 move to admit State's Exhibit 6 and publish it.

10 THE COURT: Any objection?

11 MR. SMILEY: No objection.

12 THE COURT: All right. State's Exhibit 6
13 admitted without objection.

14 (State's Exhibit 6 was marked for
15 identification and admitted into evidence.)

16 (Whereupon, the DVD containing the interview
17 was shown to the jury.)

18 BY MR. EVANS:

19 Q. Detective Bailey, the Embassy Suites this happened
20 in, what county is that located in?

21 A. Charleston.

22 Q. And just kind of in summation of that statement,
23 had the defendant seen -- by his statement: Had you seen
24 Kayla at the party when you got there?

25 A. Not when he got there, no.

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1 Q. Okay. And he said he had sex with her, correct?

2 A. Yes.

3 Q. Was he aware that she was intoxicated?

4 A. Yes.

5 Q. Was he intoxicated?

6 A. No.

7 Q. Okay. After that interview, what did you do?

8 A. He was arrested and charged with CSC, criminal
9 sexual conduct third degree.

10 MR. EVANS: Beg the Court's indulgence.

11 Thank you, Detective Bailey. I don't have
12 any further questions at this time.

13 THE COURT: Cross-examination?

14 MR. SMILEY: May we take a break first, sir?

15 THE COURT: Yes, we can do that.

16 Mr. Foreman, ladies and gentlemen: We'll
17 take our morning break. If you would, go to the jury
18 room. Please don't discuss the case among yourselves.

19 (In open court, jury not present.)

20 All right. We'll take about a 15-, 20-minute
21 break.)

22 (In open court, jury present.)

23 THE COURT: Thank you very much.

24 Cross-examination?

25 CROSS-EXAMINATION

1 BY MR. SMILEY:

2 Q. Guess. Detective Bailey, I'm Jim Smiley. I know
3 you know that, but I'll introduce myself, and I represent
4 Stewart.

5 I got a bunch of questions for you, so we're
6 going to start off with some simple ones. You're in that
7 special unit, SVU, sort of like that Law and Order, SVU,
8 special victims unit, right?

9 A. Correct.

10 Q. How many detectives are in that unit?

11 A. Three, plus our sergeant.

12 Q. Three plus a sergeant. Was Detective Repman part
13 of that?

14 A. Unit? No.

15 Q. So if I understand correctly, something happens.
16 The police are called. In this case, a 911 call. An
17 officer on the street, or, in this case, two officers
18 come to the hotel, correct, or a responding officer
19 comes --

20 A. Correct.

21 Q. Okay. They do the initial -- they're the first
22 ones there, so they take the initial, for lack of a
23 better word, view of what's going on.

24 A. Sure.

25 Q. And they do the initial things like find witnesses

1 that are there --

2 A. If they do, sure, it's nice.

3 Q. They establish a scene, if there is one, correct?

4 A. Hopefully.

5 Q. And get the basic information to pass on to a
6 detective, right?

7 A. Correct.

8 Q. And this case went to a regular detective first,
9 correct?

10 A. He was in working with the homicide division.

11 Q. Okay.

12 A. So we use a regular detective, and we have four
13 divisions up there, crime, property, homicide division.

14 Q. Well, it didn't come to the specialized unit to
15 begin with?

16 A. Correct.

17 Q. Even though it was characterized as a sexual
18 assault, it went to a detective assigned to crimes
19 against persons, correct?

20 A. There's probably a reason for it, but he handled
21 it when she came in to talk.

22 Q. So he was initially assigned to the case?

23 A. No. He wouldn't have been assigned to the case.
24 She just showed up at City Hall, and he may have been the
25 only person that could assist him at the time, so I'm

1 sure his sergeant said, Get a statement from her.

2 Q. Okay. So he was never assigned to this case.

3 A. No.

4 Q. All right. And you were able to review the report
5 of the initial reporting officer?

6 A. Yes.

7 Q. And that would be Officer Johnson?

8 A. Yes.

9 Q. Is the -- back up. The initial 911 call, shortly
10 thereafter, dispatch was about 20 to 12:00 that night?

11 A. 11:30, p.m., approximately, sure.

12 Q. Okay. And they arrived quickly, correct?

13 A. They did.

14 THE COURT: I'm sorry. What time did she
15 say?

16 MR. SMILEY: 11:38, Your Honor.

17 BY MR. SMILEY:

18 Q. Upon arriving, that detective was able to speak
19 with Ms. | , correct?

20 A. The person responding to the call wasn't a
21 detective. It was Officer Johnson, a patrol officer.

22 Q. Excuse me. I'm not trying to be tricky. Officer
23 Johnson reported to the scene, and my question was, he
24 had an opportunity to speak with Ms. | , didn't he?

25 A. Correct. I wasn't trying to trick you. I'm

1 just -- you said detective. I just wanted to make sure
2 you understand it was a patrol officer responding.

3 Q. He's a police officer, right?

4 A. Yes, sir.

5 Q. And he works for the city of North Charleston?

6 A. Yes.

7 Q. Now, Manager Delis testified that they sealed the
8 room. Do you know who told him to release the room?

9 A. No.

10 Q. Okay. Was any officer dispatched to the room?

11 A. I don't know if they were dispatched. They would
12 be dispatched to a location. An officer went into the
13 room when they were there.

14 Q. So an officer went up to 403?

15 A. Correct.

16 Q. An officer for the city of North Charleston?

17 A. Yes.

18 Q. Okay. Were any pictures taken of the room that
19 night?

20 A. Not that I know of.

21 Q. Were any fingerprints collected from the room that
22 night?

23 A. Not that I'm aware of.

24 Q. Was any -- was the liquor bottle collected?

25 A. There was no search warrant executed on the room

1 at all. There was no evidence collected or pictures
2 taken of the room.

3 Q. Nothing was done at the scene?

4 A. That's correct, as far as I know, right.

5 Q. So the bottle wasn't collected. The marijuana
6 wasn't collected. The keys weren't collected. No
7 written statements were taken that night.

8 A. I only have the incident report to rely on, and it
9 doesn't look like there was.

10 Q. You're the case officer, right?

11 A. Correct, and I wasn't provided any written
12 statements or evidence or advised a search warrant was
13 executed on the room the night the officer responded.

14 Q. And the people that would make those decisions
15 would be the city of North Charleston police department?

16 A. That's correct.

17 Q. All right. And in this case, you got it -- you
18 were assigned the case approximately five days after the
19 incident?

20 A. Correct.

21 Q. Did you go to Room 403?

22 A. No.

23 Q. Did you go to the hotel?

24 A. Yes.

25 Q. When is the first time you went to the hotel?

1 A. To speak to Mr. Delis. I don't remember the
2 dates.

3 Q. When you first got assigned the case, you went and
4 saw Mr. Delis?

5 A. It wasn't immediately after I was assigned the
6 case, but some time after the investigation, I went and
7 spoke to Mr. Delis. I don't remember the date.

8 Q. You interviewed Kayla, correct?

9 A. Correct.

10 Q. You interviewed Mr. Filbeck, correct?

11 A. Correct.

12 Q. You interviewed Mr. Middleton?

13 A. Yes.

14 Q. You collected -- I'll just ask it this way, and I
15 think you've answered it, so forgive me. No forensic
16 evidence whatsoever was collected from the scene.

17 A. Correct.

18 Q. All right. The only evidence collected was her
19 dress?

20 A. That's correct.

21 Q. Her leggings or hose?

22 A. Yes.

23 Q. A pair of underwear, correct?

24 A. Yes.

25 Q. And I believe there was a photograph taken down at

1 the hospital, correct?

2 A. Correct.

3 Q. And some nail clippings from her fingers.

4 A. Yes.

5 Q. That's it, right?

6 A. No. As far as evidence goes, there was a VHS
7 tape, the statements, and the key card transaction report
8 as well.

9 Q. Okay. So just make sure --

10 A. Sure.

11 Q. You got the copy of the key register?

12 A. Yes.

13 Q. The VHS tape that you couldn't really see a whole
14 lot on, correct?

15 A. That's correct.

16 Q. All right. Other than Mr. Filbeck, and not
17 Ms. | or Mr. Middleton, did you speak to anyone else
18 at the party?

19 A. No, not at the party.

20 Q. You said besides the victim, Mr. Middleton, and
21 Mr. Filbeck?

22 A. Yes.

23 Q. You didn't get a statement from anybody else that
24 had been at the party?

25 A. Not at the party, no.

1 Q. And when you talked to Ms. | , she basically
2 told you she didn't remember that night, correct?

3 A. Essentially.

4 Q. Essentially, and, again, I'm not trying to be
5 tricky. I'm just trying to lay it out. So she
6 delineates a point in time when her memory fades,
7 correct?

8 A. Correct.

9 Q. And I believe she's testified consistently that
10 that was -- that she doesn't remember anything after
11 Mr. Filbeck came back in?

12 A. Correct.

13 Q. Right. Until she was in the hospital, early
14 morning, correct?

15 A. I'd have to disagree with that. What specifically
16 are you referring to, as far as your memory goes?

17 Q. When she woke up in the hospital?

18 A. Oh, she remembers waking up in the hospital.

19 Q. And that is when her memory comes back, correct?

20 A. Yes.

21 Q. And when you spoke to Mr. Filbeck, he described
22 taking her to the room, correct?

23 A. Yes.

24 Q. And he described that in the elevator she fell
25 down?

1 A. I don't believe he said that in his statement to
2 me. I think he testified to that here in court the other
3 day.

4 Q. If I get mixed up, I'm human.

5 A. That's fine.

6 Q. Now, Ms. [REDACTED] reported to you that she had two
7 drinks of Ciroq peach vodka and Sprite before the party.

8 A. Correct.

9 Q. She also told you that she had eaten a meal that
10 afternoon at Jim & Nick's?

11 A. Yes.

12 Q. All right. She also described coming back to the
13 room with her friend Ms. Alston, right?

14 A. Yes.

15 Q. And had a third drink of the same size, right, or
16 made a third drink of the same size, correct?

17 A. Correct.

18 Q. And we're -- there's an assumption that she drank
19 all three of those drinks, right?

20 A. Yes.

21 Q. Because she wouldn't be able to tell otherwise
22 since all of her drinking took place in the room because
23 no cups were collected from the room, correct?

24 A. Correct.

25 Q. Mr. Filbeck -- forgive me if I'm slow. I've got a

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1 cold going on. Forgive me. I'll get there.

2 Mr. Filbeck told you he went in the room,
3 correct?

4 A. Yes.

5 Q. That she let herself in with a key, and they went
6 in and they were there for a period of time.

7 A. He said that one of them let them both in. I
8 don't know if she said she let them in.

9 Q. Now, Mr. Rumsey, he gave you a statement, right?

10 A. Yes.

11 Q. And he's the one that reported finding Ms. |
12 on the first floor service area, correct?

13 A. Correct.

14 Q. And he told you --

15 MR. EVANS: Your Honor, I'm going to object
16 on hearsay grounds at this point.

17 THE COURT: Overruled. Go ahead.

18 BY MR. SMILEY:

19 Q. In the statement he provided you, isn't it true
20 that he said that when he saw her and approached, she
21 fell down?

22 A. Yes.

23 Q. And that he took her to his office, that she
24 walked and he gave her support.

25 A. Yes.

1 Q. Now, he also told me when she fell to the ground
2 that she said, I've been raped.

3 A. Yes.

4 Q. You're also aware that she recanted that shortly
5 thereafter?

6 MR. EVANS: Objection, Your Honor. Hearsay.

7 THE COURT: Overruled.

8 THE WITNESS: According to the police report,
9 she was asked.

10 BY MR. SMILEY:

11 Q. The police worked with you, right?

12 A. They did.

13 Q. The officers that worked on the street don't have
14 the same level of training in special areas, necessarily,
15 as you do?

16 A. I don't know what Officer Johnson's past
17 experience is. I can't speak to that.

18 Q. He worked for the city of North Charleston?

19 A. He does.

20 Q. He's a police officer. He was the first one on
21 the scene, and he spoke to her shortly after he arrived?

22 A. Correct.

23 Q. And she denied sexual assault?

24 A. According to the report, yes.

25 Q. Do you have any reason to disbelieve --

1 A. No, I don't. According to the report -- I refer
2 to the report, not the officer, necessarily.

3 Q. Did you ever talk to Officer Johnson?

4 A. I did not.

5 Q. In doing a thorough investigation, you wouldn't
6 have found it advantageous to get what his view -- from
7 his experience and training of what was going on that
8 night?

9 A. I felt like he stated what he had to say in the
10 incident report.

11 Q. She also told you she had been in a physical
12 altercation with an unknown black male?

13 A. Yes.

14 Q. And that person had on a blue shirt?

15 A. Yes.

16 Q. And that he had hit her?

17 A. Yes.

18 Q. Mr. Rumsey, he also reported to you when he first
19 saw her, she wasn't crying, correct?

20 A. Yeah. I think she said she looked like she had
21 tears in her eyes and maybe had been but wasn't at the
22 time.

23 Q. When he arrived, she fell down and cried, and he
24 carried her away?

25 A. Correct.

1 Q. Now, you spoke with the officer, friend,
2 acquaintance of Ms. | , Alphonso Green, correct?

3 A. Yes.

4 Q. And you took a statement from him, correct?

5 A. I did.

6 Q. Fair to say that their acquaintance was -- let me
7 try to ask it right.

8 Is it fair to say that his acquaintance with
9 Ms. | had only been for about a month, right?

10 A. Yes.

11 Q. And that's prior to this incident, a month prior.

12 A. I believe so.

13 Q. And that they did not have any kind of intimate
14 relationship, they were just acquaintances.

15 A. To the best of my knowledge, they were just
16 acquaintances.

17 Q. I was trying to get it, and maybe you can tell me.
18 They wouldn't let her leave the hospital because of her
19 intoxication, right?

20 A. Correct.

21 Q. And she needed to find somebody to come get her
22 though, didn't want her to go in an Uber or taxi. They
23 wanted somebody they knew to come get her?

24 A. Yes.

25 Q. But she didn't have her purse, right?

1 A. Correct.

2 Q. And so the hospital reached out to the hotel, and
3 it appears her purse with her phone in it was brought to
4 her?

5 A. Yes.

6 Q. So she had her phone with all of her contacts to
7 call someone to get her, right?

8 A. Yes.

9 Q. And in this case, it took some time before
10 Mr. Middleton came in to talk to you, right?

11 A. It did.

12 Q. Now, he was under no obligation to talk to you at
13 all, correct?

14 A. Sure.

15 Q. He missed a couple of appointments, didn't he?

16 A. He did.

17 Q. He also -- and I know you are always busy, and I
18 think you testified you had had a real tough week leading
19 up to that interview with Mr. Middleton, right?

20 A. We're always the same.

21 Q. I understand. Believe me, I understand. Now, you
22 were also -- everybody wasn't hopping to it when you were
23 asking him to come see you, correct?

24 A. Can you repeat that?

25 Q. I'll make it a little clearer. The people that

1 you wanted to talk to weren't running to the police
2 station to see you. There were some delays otherwise
3 than just Mr. Middleton, correct?

4 A. No delays other than with Mr. Middleton.

5 Q. How about Mr. Rumsey?

6 A. I was about to say that. Except to when -- I
7 believe on the 18th I spoke to him. He did not want to
8 see me, but I went through his manager, and he came in
9 that day, yeah, so he was hesitant to come in.

10 Q. He didn't want to come in. He was going out of
11 town or something to that effect, and you were, like,
12 call the manager. Manager said, I'll get him in right
13 now, and I'll have him bring you the tape when he comes?

14 A. True, true. Yes.

15 Q. Okay. Mr. Green, you had some problems hooking up
16 with him too?

17 A. We played some phone tag.

18 Q. Right, and so -- it goes back to when you were
19 trying to get people in. Sometimes they're not able to
20 do that immediately, are they?

21 A. Your client is the only one who was ducking and
22 dodging me. Everybody else -- except for maybe Rumsey
23 who didn't want to come in that day, but his manager made
24 him. Everybody else, it was just a scheduling issue.
25 When can you come in, or, you know, we hadn't made

1 contact, but with the defendant I had made contact. I
2 had set appointments. He just didn't show, and he'd come
3 in later or wouldn't call, and he didn't call back, and
4 it took 13 days, and it just -- I was trying to get him
5 to come in.

6 Q. And you told him you wanted him to come in to take
7 a statement from him?

8 A. I did.

9 Q. Now, before you interviewed Mr. Middleton, you
10 didn't have an arrest warrant in this case?

11 A. Correct.

12 Q. You have an arrest warrant when you believe you
13 have probable cause, correct?

14 A. Correct.

15 Q. Fair to say, other than Mr. Middleton's statement,
16 you had no evidence of sex, did you?

17 A. Not fair to say.

18 Q. Excuse me?

19 A. Not fair. You said is it fair to say? No.

20 Q. Let's talk about the evidence. You didn't have
21 any physical evidence, correct, DNA?

22 A. Correct.

23 Q. You didn't have any witness that said that they
24 saw sex, correct?

25 A. Correct.

1 Q. You didn't have any video that showed any sex.

2 A. These types of assaults, there are very rarely any
3 witnesses to it. It's a private thing.

4 Q. I'm talking about this case.

5 A. Right. There was no video surveillance in the
6 hotel room at the Embassy.

7 Q. All right. So before Mr. -- without
8 Mr. Middleton's words, all right, you did not have
9 probable cause.

10 A. I would disagree. I had text messages from him,
11 from his phone.

12 Q. That's his words, right?

13 A. He was saying that he had sex with her.

14 Q. Right. Other than his words.

15 A. I have the victim's statements and statements of
16 witnesses who observed her condition and observed him at
17 her room, so there was evidence. That is considered
18 evidence.

19 Q. All right. But you didn't draw a warrant until
20 after speaking with Mr. Middleton, right?

21 A. Because I wanted to give him an opportunity to
22 tell his side of the story.

23 Q. Now, the dress you collected, the underwear, the
24 leggings, was any examination made of those?

25 A. It was sent to SLED, yeah.

1 Q. Was any bodily fluids found on them?

2 A. No.

3 Q. Now, Ms. |. denied ever using marijuana to you,
4 right?

5 A. I think so, yeah.

6 Q. Now, when you spoke to Mr. Middleton, you told him
7 you wanted to hear his side of the story, right?

8 A. Correct.

9 Q. And you told him you were a straight shooter?

10 A. Correct.

11 Q. You told him you didn't drink, right?

12 A. Right.

13 Q. And then you told him that you probably wouldn't
14 be drunk after a couple of beers, right?

15 A. Right.

16 Q. Okay. Mr. Middleton told you that he spoke to his
17 wife in the room?

18 A. Correct.

19 Q. After they had had sex, right? After he and
20 Mrs. |. had sex?

21 A. Uh-huh.

22 Q. And that after that conversation, he told
23 Ms. |. that he had to go.

24 A. Correct.

25 Q. All right. And that she wasn't happy about that.

1 A. Correct.

2 Q. Did you ever go through Ms. [REDACTED]'s phone?

3 A. No.

4 Q. So you never actually looked at the text messages
5 between Stew --

6 A. No, I did. When I spoke to her, then she showed
7 me on her phone the text message she was referring to.

8 Q. Were there any other text messages than those?

9 A. No, not that I saw.

10 Q. And he was saved in her phone as Stew?

11 A. The text messages were, yeah. I don't remember if
12 it was Stew or Stewart.

13 Q. State's Exhibit No. 8, is this -- I got the same
14 problem.

15 A. Once you hit 40.

16 Q. Yes.

17 A. Yes.

18 Q. Was that a copy of the screen shot that she gave
19 you?

20 A. It is.

21 Q. And it's saved as Stew, correct?

22 A. Yes.

23 Q. Did you ever talk to -- did you ever talk to
24 anybody at the company about Stewart Middleton's
25 nickname?

1 A. No.

2 Q. Were you able to actually -- she said she got the
3 phone number from somebody else, right?

4 A. I believe in our talk that day she said she got
5 the phone number from Mr. Filbeck.

6 Q. All right. Did you ever ask Mr. Filbeck if he had
7 the number?

8 A. I don't remember asking him.

9 Q. Part of your job is to corroborate things?

10 A. Yes.

11 Q. The more you corroborate, the more you can paint a
12 full picture?

13 A. Sure.

14 Q. So when, for instance, Mr. Middleton would tell
15 you something, you would tell him beforehand, Hey, I know
16 the answer to most of these questions. I'm corroborating
17 to see your veracity, right?

18 A. Yes.

19 Q. Did you ever test Ms. [REDACTED]'s veracity?

20 A. In what manner?

21 Q. For instance, did you ever -- you didn't follow up
22 with where she got the phone number from, right?

23 A. I didn't feel it really added a lot to the case
24 because it didn't matter where she had the phone number
25 from. If she had it previously, it wouldn't have

1 mattered.

2 Q. It wouldn't have mattered if there was any
3 activity, any phone calls between the two of them
4 beforehand?

5 A. I mean, I know where you're going with that, but a
6 previous relationship with someone, if there was one,
7 which there wasn't, doesn't condone non-consensual sex.

8 Q. And I understand your job is to make arrests, and
9 your believe it was not consensual?

10 A. Correct.

11 Q. That's what this jury is here to determine, right?

12 A. Correct.

13 Q. But in preparing your case, you want to make sure
14 you get it right, correct?

15 A. Correct.

16 Q. So you would like to corroborate anything you can,
17 right?

18 A. Right.

19 Q. Okay. For instance, Ms. |. 's -- well, I'll ask
20 it this way: Did you inquire with Ms. |. when she
21 had had an intimate relationship --

22 MR. EVANS: Objection, Your Honor.

23 THE COURT: I haven't heard the question yet.

24 BY MR. SMILEY:

25 Q. -- prior to this, the last time?

REBECCA BAILEY - CROSS-EXAMINATION

1 MR. EVANS: Objection, Your Honor.

2 THE COURT: What is the legal objection?

3 MR. EVANS: I think the rape shield statute
4 keeps this line of questioning out.

5 THE COURT: I'll sustain the objection.

6 BY MR. SMILEY:

7 Q. On the DNA analysis, there was no DNA of
8 Mr. Middleton found?

9 A. Correct.

10 Q. Did you speak to anybody at the hospital when you
11 were conducting your case?

12 A. No.

13 Q. When you were corroborating your case?

14 A. No.

15 Q. You just answered it, so I'm sorry. Let's see.
16 Since Detective Repman is not here, I think you can give
17 us this detail. Ms. |. came into the police station
18 the afternoon, the Sunday afternoon of the 15th, correct?

19 A. No.

20 Q. No?

21 A. No. She came in on the 16th.

22 Q. The Monday. Okay.

23 A. It was Monday the 16th when she came to City Hall.

24 Q. All right. Thank you. So she came to City Hall
25 on Monday the 16th, and at that point in time, she had

1 not been evaluated with a rape kit or anything like that?

2 A. That's correct.

3 Q. About finished.

4 To sum up, North Charleston, the city of
5 North Charleston police department did an initial report,
6 correct?

7 A. Right.

8 Q. Did a report by Detective Repman on that Monday
9 afternoon?

10 A. Correct.

11 Q. You were assigned it on the 18th, and you
12 collected what you've described, several statements and a
13 VHS tape and the clothes and the lock registry, correct?

14 A. Not on that day, but yes.

15 Q. Right. And that's the extent of North
16 Charleston's involvement?

17 A. Yes.

18 Q. The city of North Charleston has a forensics unit,
19 right?

20 A. Crime scene, yeah.

21 Q. And they're called out to scenes all the time,
22 correct?

23 A. They are.

24 Q. And it certainly would have been helpful if they
25 would have been able to process hotel Room 403?

1 A. It would have been helpful if they would have
2 taken pictures on that particular night. This case isn't
3 driven by DNA, him having sex with her, so that wasn't
4 going to help this case but photos, sure.

5 Q. Is could have shown all kinds of things, of the
6 bottle, the glass, the empty cups, correct?

7 A. I agree.

8 Q. It could have shown an unknown bed. It could have
9 shown you a lot of the things in an ice bucket, whether
10 or not this ice bucket was used. That would have been
11 helpful, wouldn't it?

12 A. To some degree, pictures would have been nice.

13 Q. You watched that VHS tape, right?

14 A. Yes.

15 Q. And it showed -- you could see people in it. It
16 just wasn't that they were easily identifiable.

17 A. The tape was a very poor quality.

18 Q. But y'all looked at the tape right around the time
19 that the other key was -- the third key was issued,
20 correct?

21 A. I think the time frame I requested was a lot
22 longer -- it was an expansive time frame.

23 Q. Well, from getting the -- let me make sure I have
24 the right word, interrogation report for block number
25 403, you were able to determine when a third key was

1 issued, correct?

2 A. At the time I requested that, I didn't know when
3 the third key was issued, but I knew the incident had
4 ended at 11:38 p.m., so that was probably stated when
5 asking for a time frame for that particular report.

6 Q. All right. After you got a key report, you then
7 watched the VHS tape?

8 A. I don't know which I did first.

9 Q. You didn't find that those two would go together?

10 A. I don't recall because the tape was of such poor
11 quality.

12 Q. Okay.

13 MR. SMILEY: That's all I have, Your Honor.

14 THE COURT: Redirect?

15 MR. EVANS: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. EVANS:

18 Q. Detective Bailey, remind the jury what date you
19 were assigned to this case.

20 A. December 18th, 2013.

21 Q. So that would have been about four days after the
22 incident?

23 A. Correct.

24 Q. So did you have any say-so in the decisions made
25 about the scene?

REBECCA BAILEY - REDIRECT EXAMINATION

1 A. I did not. I wasn't present.

2 Q. Why did you make the choice not to execute a
3 search warrant on the room once you got involved?

4 A. Because, as you stated, the assault happened on
5 December 14th, 2013. I wasn't made aware of the case
6 until the 18th, and that is a considerable amount of time
7 to pass, especially for a hotel room which is usually
8 contaminated if you get in there right after something
9 happens. That's a big time that's passed, but when I was
10 assigned the case on the 18th, I was also provided the
11 text message exchange between the victim and the
12 defendant, so it was clear that this was not going to be
13 a case driven by DNA. It would be a matter of consent.

14 Q. In your experience, is there any sort of inherent
15 issues with hotel rooms, investigating crimes?

16 A. They're contaminated. I mean, people are in and
17 out of them all the time. They're cleaned. They're
18 turned over daily. Employees are in there all the time.

19 Q. And you mentioned you watched -- or you requested
20 a search of a specific time frame of the video. Do you
21 recall how long of a time frame you viewed the video for?

22 A. I believe I tried to review the whole thing.

23 Q. Do you remember the amount of time you had to
24 watch the video for?

25 A. I don't remember. It was considerable, I think.

1 Q. Would it help your recollection if I showed you a
2 copy of your supplemental report?

3 A. Sure.

4 MR. EVANS: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 THE WITNESS: Do you want me to read what's
8 on here?

9 BY MR. EVANS:

10 Q. If that helps refresh your recollection, how long
11 of a period was the videotape for that you received and
12 requested? Or received, at least.

13 A. Well, I reviewed it for ten hours and five
14 minutes.

15 Q. So it's ten hours of surveillance footage that you
16 received?

17 A. Yes.

18 Q. And you also requested, in addition to the video,
19 the key card report for the room?

20 A. Correct.

21 Q. And you spoke to the victim, correct?

22 A. Correct.

23 Q. You also spoke to Mr. Rumsey?

24 A. Correct.

25 Q. Mr. Delis?

1 A. Correct.

2 Q. Mr. Filbeck?

3 A. Correct.

4 Q. Alphonso Green?

5 A. Correct.

6 Q. And, also, you mentioned the defendant, correct?

7 A. Correct.

8 Q. Why did you decide not to -- I guess as Mr. Smiley
9 asked, do more investigation into the victim's telephone?

10 A. I didn't do more investigation into either the
11 victim or the defendant's telephone because the victim
12 was very forthcoming with her text messages and phone
13 calls she had between her and the defendant, and the
14 defendant didn't deny that communication.

15 He confirmed, and I'm assuming if the
16 defendant had anything to show me that would have, you
17 know, helped his account of the story, he would have done
18 so at the time we met. If they're both saying that's
19 what they had, then I have no reason to not believe them.

20 Q. Why did you choose not to speak to anyone at the
21 hospital?

22 A. We did the reports.

23 Q. So it wasn't indicated in the report where she was
24 transported to?

25 A. Yes.

1 Q. In your experience as a special victim's
2 detective, is it uncommon for victims to sometimes recant
3 or kind of partially recant incidents?

4 A. No.

5 Q. No, it's not uncommon?

6 A. It's not uncommon.

7 MR. EVANS: Beg the Court's indulgence.

8 Thank you, Detective Bailey. I don't have
9 anything further, Your Honor.

10 THE COURT: Any recross?

11 MR. SMILEY: No, Your Honor.

12 THE COURT: You may step down. Thank you.

13 Call your next witness, please.

14 MR. EVANS: Your Honor, the State calls Kathy
15 Gill-Hopple.

16 KATHERINE GILL-HOPPLE,

17 having been first duly sworn,

18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 MR. EVANS: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir.

23 BY MR. EVANS:

24 Q. Good afternoon, Dr. Gill-Hopple. How are you?

25 A. Good.

1 Q. Where are you currently employed?

2 A. I'm the forensic nurse examiner coordinator at the
3 Medical University of South Carolina.

4 Q. You kind of mentioned your position there. What
5 are your duties there at MUSC?

6 A. I manage the program of sexual assault nurse
7 examiners. I do the hiring, the quality assurance, the
8 policies and procedures recruiting, teaching, case
9 review.

10 Q. What is your educational background?

11 A. I received my nursing degree in 1980 from St.
12 Louis University. I have a bachelor's degree from there,
13 a master's degree from Wichita State University and a PhD
14 in nursing from the University of Nebraska Medical
15 Center.

16 Q. Do you have any education and training specific to
17 sexual assault investigations?

18 A. I do. I attended training for sexual assault
19 nurse examiners in adults and pediatrics, and I have
20 additional clinical training in both of those. I have
21 training in death investigation and forensic interviewing
22 and as a domestic violence nurse examiner.

23 Q. How long have you been practicing as a SANE nurse?

24 A. Seventeen years.

25 Q. Have you ever been qualified as an expert in court

1 before?

2 A. Yes, I have.

3 Q. Do you know about how many times?

4 A. Three times, I think.

5 MR. EVANS: Your Honor, at this time we'd
6 move to qualify Dr. Gill-Hopple as an expert in forensic
7 nursing, sexual assault nurse examination, and sexual
8 assault dynamics.

9 THE COURT: Any objection?

10 MR. SMILEY: No objection, Your Honor.

11 THE COURT: All right. Court so finds.

12 BY MR. EVANS:

13 Q. Dr. Gill-Hopple, what's the purpose of a sexual
14 assault forensic exam?

15 A. An exam for sexual assault involves a nurse
16 examining a patient for injury, infection. The basic
17 sequence is that we take a history of the assault for
18 diagnosis and treatment. We do a head to toe physical
19 exam. We do a detailed genital exam. We collect
20 forensic evidence, and we provide medical treatment and
21 referrals.

22 Q. Okay. So is part of it for medical treatment
23 purposes?

24 A. It is all for medical treatment purposes.

25 Q. Is part of it also evidence gathering?

KATHERINE GILL-HOPPLE - DIRECT EXAMINATION

1 A. Well, yes.

2 Q. So kind of a dual role?

3 A. It is.

4 Q. What was your role in this specific case?

5 A. In this specific case, I just did a case review,
6 which is normal. I review all the cases that the nurses
7 do after to just verify the documentation.

8 Q. So you reviewed the paperwork?

9 A. Yes, the paperwork and any photographs that were
10 taken.

11 Q. And you do that for every sexual assault exam,
12 correct?

13 A. Yes, I do.

14 Q. When did Ms. | , or Ms. | at that time,
15 undergo her forensic exam?

16 A. December 16th, 2013.

17 Q. Okay. Who conducted that examination?

18 A. That was conducted by Stephanie Green. She worked
19 for us for quite a long period of time. She is no longer
20 employed at MUSC.

21 Q. Did you review the findings from that examination?

22 A. Yes, I did.

23 Q. Did you concur with the findings of that
24 examination?

25 A. Yes, I did.

1 Q. I think you kind of briefly mentioned what a
2 typical sexual assault exam consists of, but can you go
3 through a little more detail what happens when a patient
4 comes in, reports a sexual assault, and has an exam
5 performed?

6 A. Sure. When a patient comes in for a sexual
7 assault exam, for our team we take care of adults age 18
8 and older, and we will see them when they come within
9 five days, or 120 hours after the assault. They come
10 into the emergency department. The SANE nurse is called.
11 We have a specialized exam room. We bring the patient
12 there.

13 We have them write in forms. We take a
14 history, anything from what allergies do you have, what
15 medications are you taking, who is your primary care
16 doctor, what kind of infections or injuries have you had?
17 So we take a detailed medical history, but we also take a
18 detailed history of the assault so that we can really
19 guide our observations and our exam appropriately.

20 We do a physical exam, head to toe, looking
21 for any evidence of injuries. We do a genital exam
22 that's very detailed. It's really similar, in a sense,
23 to what women have when they go to their OBGYN doctor on
24 a yearly basis for a Pap smear. It's quite a bit more
25 detailed than that, though, and we are then looking for

1 the presence of injury or infection, and we document
2 that.

3 We are also collecting evidence so that is
4 everything from, perhaps, fingernail scrapings,
5 collecting clothing, oral swabs to vaginal swabs and anal
6 swabs and swabs anywhere on the body where there might
7 have been bodily fluids deposited.

8 Q. You mentioned taking an oral history of the
9 incident. Is it unusual for patients to have incomplete
10 histories or reasons they can't recall the entire
11 incident?

12 A. No. In our program, it's not unusual at all.

13 Q. Turning to Ms. |. 's special exam, they did a
14 full body examination, correct?

15 A. Yes.

16 Q. Were there any physical injuries noted on the
17 outside of Ms. |. 's body?

18 A. Yes, there were.

19 Q. What injuries were they and where were they?

20 A. There were abrasions on her back, contusions on
21 her thigh, and if I can refer back to the chart --

22 Q. Please.

23 A. There's -- she had abrasions, or the nurse noted
24 scratches, same thing, to the middle back and lower back.
25 There were contusions on her left thigh , two of them,

1 and an abrasion on the patient's right hand.

2 Q. So she had, essentially, injuries on --

3 A. Abrasions, that's like skinning your knee.

4 Q. So, like, a running injury?

5 A. Yes.

6 Q. And you said they also undergo a genital exam.

7 Were there any injuries noted on her genital exam?

8 A. No, there were not.

9 Q. Is that unusual in your experience?

10 A. No, it's not unusual.

11 Q. What are some reasons that you may not see a
12 genital injury occur, even in nonconsensual sexual
13 encounter?

14 A. Well, it's not at all unusual. Probably 70 to 80
15 percent of our patients don't have any genital injury,
16 even though they're being seen after a sexual assault.

17 There are several things that really can make
18 a difference in that. One is that area of the body is
19 very elastic. For women, estrogen, when it's in your
20 body, it not only causes you to have periods, it also
21 causes that tissue to be very stretchy and heals very
22 rapidly. That makes sense when you think that that's
23 where the baby has to come out, through the vagina, in
24 that area, so it has to stretch to accommodate that.

25 So any other stretching that might be quite a

1 bill smaller, like a penis going inside, often that
2 doesn't cause any injury. That is made up of mucosal
3 tissue, which is very similar to the tissue that is
4 inside of your cheek. If you think about how many times
5 you might have bitten the inside of your cheek, it
6 doesn't really bleed. It heals very quickly. You don't
7 need any additional treatment.

8 It's the same kind of tissue, so a lot
9 depends on how soon after an assault a patient comes in
10 as to whether or not there will be injury, but it also
11 depends on how much stretching of the tissue occurred.
12 If there was so much stretching that the tissue couldn't
13 expand anymore, then that's what causes an abrasion or a
14 laceration or a tear or a bruise.

15 Q. In your experience, would incapacity affect
16 whether there are genital injuries noted?

17 A. It does seem to have an effect. The majority of
18 patients in our program as well as in the research
19 literature that looks at incapacitated individuals
20 reporting sexual assault, the majority don't have any
21 injury.

22 It makes sense to me, in a common sense kind
23 of way, because an incapacitated person, whether it is
24 because of drugs or alcohol or a head injury or some
25 other reason, they don't have any resistance. They don't

1 fight. Their body is flaccid and limp, so it stretches
2 quite, quite easily.

3 Q. So, in your experience and I think as the
4 literature bears out, a lack of genital injuries doesn't
5 necessarily indicate consensual intercourse; s that
6 accurate?

7 A. That's definitely true.

8 Q. You mentioned also part of the purpose of the exam
9 is for evidence collection, correct?

10 A. Yes, it is.

11 Q. In your experience, does the passage of time
12 between the incident and the forensic exam have any
13 effect on evidence collection?

14 A. Well, it certainly can because of the activities
15 of daily living that most people engage in, whether they
16 take a bath or shower, change their clothes, eat, drink,
17 go to the bathroom, all of those things can destroy
18 evidence, and just the passage of time alone can destroy
19 evidence.

20 So the longer the person waits from the time
21 of the assault to the time they're coming in, the more
22 likely it is for that evidence to be gone. That's not
23 something we see with our eyes, so we just go ahead and
24 swab anyways.

25 Q. What about if a condom were used during the

1 incident? Would that affect, in your experience, whether
2 evidence is able to be collected?

3 A. Well, it certainly could. The types of evidence
4 that we generally could retrieve would be from discharge,
5 so, for instance, had there been ejaculation, that would
6 leave some semen and perhaps DNA behind, but then there
7 is also something called touch DNA, where there are two
8 surfaces of skin that rub up against each other.

9 So if there was something covering the skin,
10 like a glove or a condom, then there isn't the ability
11 for one surface to come in contact with another. So
12 using a condom really makes it much more difficult to
13 collect evidence.

14 Q. And you also mentioned that part of the exam is
15 for medical treatment. Do you typically administer any
16 medication as far as the treatment?

17 A. Yes. Our routine is to provide all of our
18 patients with the opportunity to receive medication to
19 prevent sexually transmitted infections, pregnancy for
20 women and Hepatitis B, if appropriate, and HIV, if
21 appropriate.

22 Q. Did Ms. [] had any medication she was
23 prescribed?

24 A. She received normal medication to prevent sexually
25 transmitted infections and pregnancy prevention.

1 Q. How long does the exam typically take?

2 A. On the average, three to four hours. It just
3 depends upon the individual patient and how long it takes
4 them to give a history, how much evidence there is to
5 collect, how many photographs there are to collect, and
6 just, you know, the normal day-to-day things that happen
7 in the hospital and instructions and things like that.

8 Q. Dr. Gill-Hopple, in your experience, is it
9 uncommon for there to be sort of a delayed reporting of
10 an incident?

11 A. It's very common. We see people within 120 hours,
12 so we give them an ample amount of time to think about
13 it. Most people do want to take some time to think about
14 it. They have to decide if they're willing to go through
15 the exam, first of all.

16 A lot of times people are concerned about who is
17 going to pay for it, so they may have to call somebody to
18 ask about that, so it's not at all unusual that there is
19 a delay in time. I would say it's pretty rare to have
20 somebody come within a few -- even up to 12 hours after
21 an assault, that would be pretty unusual.

22 Q. So is it uncommon for people to be unsure, on the
23 fence about whether they want to come in for an exam at
24 all?

25 A. That's not unusual at all. Most people have to

1 really give it quite a bit of thought. It's a pretty
2 specific exam. It's not easy to go through. We ask a
3 lot of detailed questions. It's intimidating.

4 Q. Is it unusual, in your experience, to have victims
5 recant or partially recant an incident?

6 A. No.

7 Q. No, it's not unusual?

8 A. No, no. You know, typically, they don't come to
9 do that to us, as nurses, because we have a really
10 limited window of time that we see patients. It's just
11 during that time when they're asking for care, but in the
12 reading that I've done and talking with survivors and
13 talking with advocates, it's not unusual for people to
14 describe something differently or decide they don't want
15 to go through this.

16 It's a very traumatic event to lay your life
17 out for someone to analyze, to decide either what you did
18 or what you wore or what you said or what you didn't do
19 or didn't wear or didn't say makes a difference. Nobody
20 wants to have their life examined under a microscope like
21 that. People don't wake up in the morning and decide
22 they want to be sexually assaulted. That doesn't happen
23 either, so you know, it's a leap of faith for a person to
24 come forward.

25 MR. EVANS: Beg the Court's indulgence.

Thank you, Dr. Gill-Hopple. I don't have anything further at this time. Please answer any questions Mr. Smiley may have.

THE COURT: Cross-examination?

MR. SMILEY: Yes.

CROSS-EXAMINATION

BY MR. SMILEY:

Q. Make sure I get it right. It's Gill-Hopple?

A. Yes. It's a married name.

Q. Dr. Gill-Hopple, I'm Jim Smiley. I represent
Stewart Middleton.

All right. You've never examined Ms. [REDACTED] ?

A. That is true.

Q. Actually, a Ms. Green did, correct?

A. Yes.

Q. All right. There were some limited photographs taken?

A. There were some photographs taken of the non-genital injuries.

Q. And you reviewed those?

A. I did.

Q. And those photographs were saved, correct?

A. Yes.

q. Collected and -- may I have this?

MR. SMILEY: May I have this marked as

1 Defendant's Exhibit 4 for identification.

2 (Defendant's Exhibit 4 was marked for
3 identification.)

4 BY MR. SMILEY:

5 Q. You may or may not recognize this -- in preparing
6 for your testimony today, did you review the pictures
7 again?

8 A. I did.

9 Q. All right. Were they on a CD?

10 A. Well, we would have put them on a CD. They're
11 actually on computer.

12 Q. I'm going to ask you if you recognize this.

13 A. Yes.

14 Q. Okay. Those would be the same photographs?

15 A. Could I see that?

16 Q. Certainly, certainly.

17 A. It says SANE photos from MUSC.

18 Q. SANE, when I first heard that time, it is -- I
19 thought something totally different. Let's make sure --
20 SANE means sexual assault nurse examiner.

21 A. That's true.

22 Q. And there are three kinds of SANE personnel, adult
23 certification, a pediatric certification -- forgive me, I
24 know there's a third; is that correct?

25 A. No.

1 Q. No?

2 A. Well, there are teenagers, adolescents, and they
3 fall into both categories. Maybe that's what you meant.

4 Q. I guess what I'm saying is you're certified as a
5 SANE -- you have a certification in SANE protocol, I
6 guess. There's an organization, correct?

7 A. There is an organization. It's called
8 International Association of Forensic Nurses, and they
9 are kind of an umbrella organization. The American
10 Nursing Credentialing Group is the one that administers
11 the test, so I observed adults, adolescents, pediatrics,
12 and I'm Board certified as an advanced forensic nurse.

13 Q. Very good. Now we understand SANE.

14 MR. SMILEY: Your Honor, at this time I would
15 move into evidence Defendant's No. 4.

16 THE COURT: Any objection?

17 MR. EVANS: I don't have an objection to the
18 photos coming in. I'm not sure we laid the proper
19 foundation. I'm not sure what is going to pop up when we
20 play that disk.

21 MR. SMILEY: It came from you.

22 THE COURT: What is your legal objection?

23 MR. EVANS: Foundation, Your Honor.

24 THE COURT: Overruled.

25 MR. SMILEY: May I publish, Your Honor?

1 THE COURT: Yes, sir.

2 MR. EVANS: I would just like to verify
3 that's what is on the disk. Dr. Gill-Hopple hasn't, you
4 know, looked at it or anything like that.

5 THE COURT: It's in evidence.

6 (Defendant's Exhibit 4 was admitted into
7 evidence.)

8 (Whereupon, the DVD was played for the jury.)

9 BY MR. SMILEY:

10 Q. Doctor, I'm going to show you -- I believe there
11 were 17 or 18 photographs. I'm going to go through each
12 one and have you describe, as best you can, what you
13 observed.

14 A. Okay.

15 Q. Before we get to that, in reviewing for the SANE
16 protocol that Nurse Green did, one of the things she
17 noted were injuries, correct?

18 A. Correct.

19 Q. And she photographed those injuries?

20 A. Correct.

21 Q. Now, the presence of the injuries doesn't tell how
22 they got there. They just would be consistent or
23 inconsistent, correct?

24 A. Right. It's just taking a photographs of the
25 injury. We usually ask the patient how they got there

1 and they tell us.

2 Q. All right. And if they don't -- let's just start
3 with photo number one. In the notes that Nurse Green
4 collected and made in this case, she noted a red
5 abrasion, about 1.5 centimeters long on the right hand?

6 A. Yes, she did.

7 Q. Okay. Can you point out to the jury where that
8 injury is?

9 A. On the screen?

10 Q. I believe you can.

11 A. It's hard to tell from this picture, but I think I
12 just covered it up.

13 Q. Again, it's hard to tell just from one picture.
14 We usually take three pictures of each, but I think I'm
15 going to try to put a white circle around it. Is that
16 just noting the time of the examination there was an
17 abrasion on that hand, correct?

18 A. Well, that's what the documentation says, so there
19 is probably more pictures of her hand than just that one.

20 Q. And we're going to look at that one.

21 A. So this is just at the time of the exam.

22 Q. Yes, ma'am, because there appeared to be five
23 injuries that were photographed and documented.

24 A. Okay.

25 Q. And this is one of them, just to have you show

1 where it was, and we'll go to the next picture.

2 All right. This is the next photograph
3 taken, and can you tell us what part of the body that is.

4 A. I think that is probably her arm. Maybe this is
5 that part of your bone? It's a little bit different to
6 tell, but --

7 Q. Yes, ma'am, and I have the same problem, so there
8 were five injuries. There was one in the middle of her
9 back, a scratch on her lower back, a bruise on her thigh,
10 and another bruise on her thigh, and then the injury to
11 her hand. I'm trying to figure out which one that is.

12 A. If I could look through the sequence of pictures,
13 I might be able to figure it out better.

14 Q. Then we'll come back to this one. How about that?
15 Now I'm going to show you -- and I'm going sequentially
16 through the record. This is the third photograph on the
17 CD.. Can you describe that?

18 A. No.

19 Q. Okay. Then I'll go to the next one.

20 A. Okay. This is what I thought it was because I'm
21 sure that's a thumb. There's her finger, and there's her
22 wrist, right through there.

23 Q. And the injury is --

24 A. It's really difficult to see on this picture.
25 Maybe the previous picture I could see some redness.

1 Q. I'll be glad to back up, and the reason I'm asking
2 you, nurse, doctor --

3 A. Whichever, that's fine.

4 Q. -- I apologize -- is because you didn't take the
5 photographs and you weren't at the exam, but preparing
6 for this testimony and what you do in every case when you
7 review them, you look at the pictures is one of the
8 things you do, correct?

9 A. You're right.

10 Q. So backing up, this would be the third one. If
11 you look at picture number three here, can you see the
12 injury?

13 A. Well, this screen is very dark.

14 Q. Yes, ma'am.

15 A. It looks different on that screen. It looks --
16 I'm going to try to make a circle around it.

17 Q. That's the 1.5 centimeter abrasion to the right
18 wrist?

19 A. Yes.

20 Q. Okay. Thank you for doing that. Now, this, I
21 assume, is one of the injuries to the back?

22 A. Yes, it is.

23 Q. And there were two that were noted. Can you show
24 any injuries from this photograph?

25 A. Yes. Just for orientation purposes, up here is

1 the head. Bottom is down there. This is the waist here.
2 So this is the injury on the lower back, and it is
3 documented as .8 centimeters. It's less than an inch.

4 Q. Okay. And that's described as a scratch, correct?

5 A. Yes.

6 Q. Can you see the other scratch from that
7 photograph?

8 A. According to this documentation, it's up higher.
9 On the back we may need to see a different photo.

10 Q. Yes, ma'am. This will be picture number six
11 coming up. I believe there is a close-up of the injury
12 you just were shown before?

13 A. I'm sure it is.

14 Q. And, again, would you circle the injury, and
15 that's a scratch that is located in her lower back?

16 A. Yes.

17 Q. Again, is that the same injury that is showing a
18 measuring device beside it?

19 A. Yes, it is.

20 Q. All right. I show you the next picture.

21 THE COURT: What number?

22 MR. SMILEY: It would be the eighth picture,
23 Your Honor.

24 BY MR. SMILEY:

25 Q. Can you describe this?

1 A. Are you able to go back to the previous one?

2 Q. Yes, ma'am. Going back to picture number seven --

3 A. I think it looks like it's the same injury, just
4 from a different placement of the ruler.

5 Q. Yes, ma'am. Okay. When you take pictures of
6 these injuries, you aren't determining when they occurred
7 and how, you're just documenting the injury?

8 A. That's true.

9 Q. I believe this is picture number nine. I'm going
10 to the one after it, if I can get there. All right. You
11 described this injury. Will you describe this injury to
12 the jury.

13 A. This is the patient's left leg, so there is her
14 bottom, head is up here, foot is up there. There is this
15 injury, and there is this one. Those are both
16 contusions. They're bruises, essentially, which is
17 bleeding that has leaked out from the vessels from the
18 skin because of some kind of blunt, forceful pressure
19 applied and --

20 THE COURT: Ma'am, I hate to interrupt you.
21 He just asked you to identify it on the screen, not
22 describe it. Okay? Please proceed.

23 BY MR. SMILEY:

24 Q. That's on the outer left thigh?

25 A. Yes, it is.

1 Q. So for the jury, it's somewhere in this area?

2 A. Yes, it is. Little posterior. It looks like it's
3 pretty well evenly in the middle.

4 Q. Okay. Again, you can't determine how or when that
5 contusion, from looking at the photograph, happened?

6 A. We certainly can't determine when any contusion
7 happens because of pressure applied, so --

8 Q. Yes, ma'am. Going to picture number ten, again,
9 would you describe this injury and location to the jury.

10 A. That is a close-up of the contusion that is on her
11 left thigh that the nurse documented as being 14
12 centimeters in length.

13 Q. All right. I'm trying to keep count. I believe
14 this is number 11. Again, if you could, describe the
15 injuries and location to the jury.

16 A. This appears to be the same injury with a
17 measuring ruler on the left side of her thigh.

18 Q. Because I'm a lawyer, not a mathematician, how
19 many centimeters are there in an inch, do you know?

20 A. No, but you can look and see. There is an inch
21 there, so one, two -- maybe two-and-a-half?

22 Q. Two-and-a-half? Showing you picture number 13, I
23 believe.

24 A. Is that the same picture?

25 Q. Is another picture of the same injury with a ruler

1 next to it.

2 A. Yes, it is.

3 Q. Moving to the next, is that the same injury?

4 A. I think that's the contusion above the one that
5 was just mentioned.

6 Q. Okay. Can you tell from that picture where it's
7 located on the body?

8 A. Well, just from that picture alone, no.

9 Q. And I'll move to the next picture. This would be
10 picture, if I'm right, 14. It just takes a second.

11 A. Okay.

12 Q. Could you describe this injury and location to the
13 jury.

14 A. This is on her left -- basically, like, her left
15 hip. This is the bigger injury down here that we were
16 just looking at, so this is on the lateral side, or the
17 side, this way. That's a contusion.

18 Q. And I'm indicating my left hip, for the jury,
19 somewhere in this area (indicating)?

20 A. Yes, roughly.

21 Q. Would you describe this picture?

22 A. That appears to be the same injury with a
23 measuring ruler on her left hip. It's a contusion.

24 Q. All right, and I believe this should be the last
25 picture if I counted right.

1 A. Yeah.

2 Q. Those were the five injuries that were documented,
3 correct?

4 A. Yes.

5 Q. And I'm going to mispronounce this word, so you're
6 going to have to help me. There is a blue dye called
7 toluidine?

8 A. Close, toluidine.

9 Q. Before I ask for you to tell them, is that used in
10 this case?

11 A. I'll have to look on the chart.

12 Q. Yes, ma'am, please refresh your memory.

13 A. Yes, it was.

14 Q. Okay. This toluidine, how is it used in
15 connection with the exam, if you could?

16 A. Toluidine blue dye is what is called a nuclear
17 stain. It looks a lot like a paint by numbers stick, but
18 it's a swab. So it has this blue dye embedded in the
19 swab, and when you squeeze it, the dye comes out. We use
20 it to paint it on a particular part of the genitalia,
21 labium minora area, labia majora, and then when you wipe
22 it away, there is any areas of skin where the epithelial
23 layer or the top layer of your skin has been removed, the
24 nucleus, or the center of the cell underneath, is dyed
25 with the blue dye. So that helps to highlight injury.

1 It helps to document injury.

2 Q. So other than doing a visual, just without any
3 aid, a visual of genitalia looking for injury, this looks
4 for smaller injuries or injuries that aren't easily seen
5 by the eye. Would that be fair?

6 A. No, no. We would expect to see all of these
7 injuries. We use it as a documentation tool, not so much
8 as an identification tool.

9 Q. I understand.

10 A. It helps other people to see them.

11 Q. All right. And that was used in this case?

12 A. Yes, it was.

13 Q. But no injuries were documented?

14 A. That is correct.

15 Q. All right. Now, Ms. [] declined to have her
16 intimate parts photographed. That's not unusual, is it?

17 A. Not at all.

18 Q. However, since you're just reviewing the
19 photographs and the notes, or the forms, it makes it more
20 difficult for to you make a determination? Is that fair
21 to say?

22 A. Well, I can only determined based upon what I've
23 seen, so based on what I've seen, I can make a
24 determination. I can't really say whether there was any
25 genital injury because I didn't see any.

1 Q. All right. Now, if a condom is used, can
2 collection be made of lubricants or spermicide from the
3 use of a condom? That's probably a poor question. I'm
4 trying to get -- if a condom is used, other than semen,
5 does it leave behind any trace evidence?

6 A. Not that I'm aware of.

7 Q. Okay. Now, while Ms. [REDACTED] wasn't examined the
8 night of and came in two days later and the alleged
9 incident took place on the 14th, and I believe she came
10 in on the 16th, is that still within your reporting
11 protocol, correct?

12 A. Yes, it is.

13 Q. The fact that she had showered, urinated, and
14 bodily -- lived, I guess, for those two days, can make it
15 more difficult for y'all to find things, is that -- find
16 evidence?

17 A. Yes, it can.

18 Q. Okay.

19 MR. SMILEY: Beg the Court's indulgence.

20 BY MR. SMILEY:

21 Q. Just a couple more questions. Is it common for an
22 advocate, a rape advocate or victim's advocate, to
23 accompany a person to the hospital to be examined?

24 A. That's the norm.

25 Q. Okay. Is it part of the protocol?

KATHERINE GILL-HOPPLE - REDIRECT EXAMINATION

1 A. Yes, it is.

2 Q. All right. Very good. Then, in this case, there
3 was an advocate present.

4 A. Yes.

5 MR. SMILEY: That's all I have.

6 THE COURT: Any redirect?

7 MR. EVANS: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. EVANS:

10 Q. Dr. Gill-Hopple, you testified that you reviewed
11 every single sexual assault exam that's done?

12 A. Yes, I do.

13 Q. And if you disagree with any of the physical
14 findings, either in the head to toe exam or genital exam,
15 do you note that in the paperwork?

16 A. Yes, I do.

17 Q. So did you disagree with any of the findings in
18 this case?

19 A. No, I did not.

20 Q. And regarding a victim advocate being present for
21 the exam, does the victim advocate participate in the
22 exam at all?

23 A. No. The victim advocate is there for emotional
24 support.

25 Q. Did they tell victim what to say or anything like

1 that?

2 A. No. They don't talk during the exam.

3 Q. Do they help with the oral history given by the
4 patient or anything like that?

5 A. Did you say do they help?

6 Q. Do they speak about the history of the assault or
7 anything like that?

8 A. No. We only take the assault directly from the
9 patient's words.

10 Q. So the advocate is purely there for emotional
11 support, is that what you said?

12 A. Yes.

13 MR. EVANS: Beg the Court's indulgence.
14 Thank you, Dr. Gill-Hopple.

15 THE COURT: Any recross?

16 MR. SMILEY: No, sir.

17 THE COURT: Doctor, you may step down. Thank
18 you very much. You may be excused. Thank you.

19 Let me see the attorneys up here.

20 (Discussion held at sidebar.)

21 THE COURT: All right. Does the State have
22 any further witnesses?

23 MR. EVANS: At this time, the State would
24 rest its case.

25 THE COURT: Thank you very much.

1 Mr. Foreman, ladies and gentlemen: We're
2 going to take a lunch break at this time. It's 1:15.
3 What I'm going to do is ask you to come back at 3:00
4 because I've got to hear certain motions once the State
5 ends their case, and I have to hear certain motions.
6 That will take a while, and I don't want you to be
7 sitting in the jury room, so if you come back at 3:00,
8 we'll continue at that time.

9 Thank you very much.

10 (In open court, jury not present.)

11 THE COURT: Mr. Smiley, how much do you need
12 for the directed verdict motion?

13 MR. SMILEY: Fifteen, maybe twenty minutes.

14 THE COURT: They're coming back at 3:00. You
15 want to come back in an hour and a half, quarter to 3:00?

16 MR. SMILEY: That will be fine.

17 THE COURT: We'll adjourn until quarter to
18 3:00, and I'll hear your motions at that time. How many
19 witnesses do you anticipate you have?

20 MR. SMILEY: One or two. Mr. Middleton and I
21 are going to discuss at lunch whether he wishes to
22 testify again. My other witness, Officer Johnson, is
23 present. I'm going to send him to lunch.

24 THE COURT: Are you going to call him first?

25 MR. SMILEY: I'm going to call him first.

1 THE COURT: All right. We'll see you at
2 2:45. Thank you.

3 (Recess taken.)

4 A F T E R N O O N S E S S I O N

5 (In open court, jury not present.)

6 THE COURT: Okay.

7 MR. SMILEY: Your Honor, I would make a
8 motion for directed verdict in this case under the corpus
9 delecti. The State is required to prove corpus delicti
10 aliunde. Don't ask me to pronounce it correctly. That's
11 the best I can do. In other words, to take the
12 statements of the defendant, the extrajudicial statements
13 of the defendant, without those, is there any evidence of
14 a crime?

15 And I would argue in this case, Your Honor,
16 without Mr. Middleton's recorded statement at the police
17 station or his extrajudicial statement text message,
18 there is no evidence of sex whatsoever, and that is a
19 critical element of the offense that the State must offer
20 proof on, and not more than suspicion. They've got to be
21 able to show it, and then, at that point, the statement
22 of the defendant can be considered. So looking at it in
23 the light most favorable to the State --

24 THE COURT: Does it make any difference when
25 he made the statement, whether he was in custody or not

1 in custody?

2 MR. SMILEY: I don't believe it does, Your
3 Honor. I believe that it's the extrajudicial statements
4 of the defendant. To quote Williams, it says --

5 THE COURT: What are you quoting from?

6 MR. SMILEY: State v. Williams, Your Honor.
7 I'm getting to it. Just a moment. I'll make sure I get
8 to the first part, and this was an arson case, Your
9 Honor, and in looking at it --

10 THE COURT: How about the last paragraph on
11 page -- I guess what you're getting at, but go ahead.

12 MR. SMILEY: Yes, sir, that's what I'm
13 looking at.

14 THE COURT: A conviction cannot be had on the
15 extrajudicial confessions of the defendant unless
16 corroborated by proof --

17 MR. SMILEY: Yes, sir.

18 THE COURT: Okay.

19 MR. SMILEY: That's what I'm quoting from,
20 and so I believe the State is going to have to show -- it
21 can be pretty much circumstantial evidence, certainly,
22 but the corpus delicti must be proven and shown absent my
23 client's statement. Just my client's statement is not
24 enough to go to the jury, Your Honor, and I know that's
25 not very articulate, but I think you understand what I'm

1 saying.

2 THE COURT: I understand what you're saying.
3 Anything else on the directed verdict?

4 MR. SMILEY: No, sir. I don't believe so.

5 THE COURT: Pardon?

6 MR. SMILEY: I don't believe I have anything
7 else besides the general in the light most favorable to
8 the State. I don't believe they've produced certain
9 evidence, but mostly corpus delicti.

10 THE COURT: Yes, sir?

11 MR. EVANS: May it please the Court, Your
12 Honor: Mr. Smiley kind of referenced my argument a
13 little bit. As the Court's aware, during directed
14 verdict motion, the Court is to inquire -- not to weigh
15 the evidence, but the mere existence or nonexistence of
16 evidence.

17 I would draw the Court's attention to the
18 case State v. Townsend. I believe I handed it up to Your
19 Honor. If I didn't, I can hand it to you. In quoting
20 State v. Townsend. That case says that corpus delicti
21 may be sufficiently proved by presumptive or
22 circumstantial evidence --

23 THE COURT: Where are you reading from?

24 MR. EVANS: Your Honor, I am reading from the
25 second page of what you're holding, the paragraph above

1 headline four. It's citing a case State v. Roof.

2 THE COURT: That's what you're referring to?

3 MR. EVANS: Yes, Your Honor.

4 THE COURT: Go ahead.

5 MR. EVANS: Essentially, that case holds that
6 if there's not direct evidence, circumstantial evidence
7 to corroborate the defendant's statement is sufficient.
8 Also citing State v. Williams, the case that Mr. Smiley
9 handed up to you, that case holds that if there is any
10 evidence tending to establish the corpus delicti that it
11 is the duty of the trial Court to pass that question to
12 the jury.

13 Your Honor, obviously, in this case with the
14 victim not having a recollection of sexual assault
15 itself, we're not going to have direct evidence to
16 corroborate its defendant's witness.

17 THE COURT: What circumstantial evidence do
18 you have?

19 MR. EVANS: We'll get to that.

20 THE COURT: I know there is no direct
21 evidence other than his statement. What circumstantial
22 evidence do you have that there was sexual intercourse
23 between the parties on the night in question?

24 MR. EVANS: Well, Your Honor, Mr. Rumsey
25 testified and corroborates the defendant's statement he

1 made a copy of the key.

2 THE COURT: What does that have to do with
3 sex?

4 MR. EVANS: When he's saw the victim in the
5 hallway, she immediately said to him, I've been raped.
6 The medical records from Roper Hospital, the victim
7 was -- she thought that she might have been sexually
8 assaulted. At Roper Hospital inquired about a sexual
9 assault exam, and they contacted MUSC about that. The
10 SANE exam, there was testimony from Dr. Gill-Hopple today
11 she noted injuries to defendant's back.

12 The defendant in his statement said the
13 sexual intercourse took place on the floor of the hotel
14 room, and --

15 THE COURT: There again you're using the
16 defendant's statement.

17 MR. EVANS: I'm saying the injuries noted in
18 the SANE exam corroborated the statement. That's
19 circumstantial evidence that corroborates the statement,
20 and I believe that's what the case law requires, is
21 corroborating circumstantial evidence.

22 THE COURT: Okay.

23 MR. EVANS: So we have the victim's outcry
24 she was raped, inquiring about a sexual assault exam the
25 night of. We have injuries to her back that are

1 consistent with what the defendant claims happened in his
2 statement to --

3 THE COURT: I'm sorry. They said what? I
4 had difficult hearing that.

5 MR. EVANS: He said the intercourse was on
6 the floor of the hotel room, Your Honor.

7 THE COURT: All right.

8 MR. EVANS: He also said she fell down when
9 she got into the hotel room, and we heard extensive
10 testimony about the bruising on her thighs.

11 THE COURT: What's in the hospital records?
12 I haven't looked at them. What did she tell people at
13 the hospital?

14 MR. EVANS: She's telling them she thinks she
15 may have been sexually assaulted and is asking --

16 THE COURT: You've got the records. I
17 remember there was some cross about that, and --

18 MR. EVANS: It's a nurses' note, Your Honor.
19 I apologize, Judge. May I approach, Your Honor?

20 THE COURT: Yes, sir.

21 MR. EVANS: I believe it's the fifth page of
22 the records, about halfway down. Patient is inquiring
23 about a sexual assault exam, and then they further go on
24 to contact MUSC about getting a SANE exam done.

25 Case law doesn't require a certain amount of

1 circumstantial evidence that corroborates. It merely
2 requires the existence of circumstantial evidence and
3 further says that it, in quotes, is used to allow the
4 jury to determine that question.

5 I submit to the Court these kinds of cases
6 are inherent, very fact specific in making fact findings,
7 and I think there is sufficient circumstantial evidence
8 that corroborates the defendant's statements to Detective
9 Bailey and also the text message he send to Ms. |. .

10 THE COURT: Maybe I missed the point, but to
11 me it's not a question of whether she had sex or didn't
12 have sex. Okay? It's a question of whether or not the
13 actor, who in this case would be the defendant, knows or
14 should have known if the victim was mentally
15 incapacitated.

16 That's what we are talking about, mental
17 incapacitation, not whether she had sex or didn't have
18 sex. So my question to you is where, circumstantially,
19 do you have evidence that she was mentally incapacitated?
20 Because that's what the statute requires, okay, not
21 whether she had sex or not. Obviously, she had to have
22 sex, but the second question is the mental incapacity and
23 whether or not he knew or should have known, okay?

24 MR. EVANS: Yes, sir.

25 THE COURT: It's sort of got three parts. He

1 just talked about the first part. There's two more parts
2 to it, okay?

3 MR. EVANS: Yes, sir, and I would submit to
4 the Court that the facts in this case would fall under
5 not only the mental incapacity prong of the --

6 THE COURT: Tell me what the evidence is for
7 the mental incapacity.

8 MR. EVANS: Yes, sir, and also physically
9 helpless would also fall under that --

10 THE COURT: I don't even think helpless is
11 the issue, I think it's the incapacity based upon the
12 testimony I've heard.

13 MR. EVANS: Well, but the statute says or
14 physically --

15 THE COURT: I understand what it says, but
16 there's no evidence she was helpless. My question is,
17 what evidence do you have that she was mentally
18 incapacitated? That's my question.

19 MR. EVANS: Your Honor, the victim testified
20 she has limited recollection of that as a result of her
21 alcohol consumption. She testified that she had at least
22 four drinks that were half liquor, half mixer in
23 ten-ounce cups. Ms. Alston testified she was at the
24 party. Ms. Alston thought she was too intoxicated and
25 she needed to go to her room. Mr. Filbeck said when he

1 was taking her upstairs that she was falling down --

2 THE COURT: This was approximately about
3 8:00; is that right?

4 MR. EVANS: Yes, sir.

5 THE COURT: That was two-and-a-half, three
6 hours before the alleged rape.

7 MR. EVANS: When he gets to the party, he
8 says everyone is talking about how drunk she is, so he is
9 obviously aware she is intoxicated.

10 THE COURT: The statute doesn't say
11 intoxication, okay?

12 MR. EVANS: I understand that, Judge, but I'm
13 talking about inferences that the jury can draw from
14 this.

15 THE COURT: Go ahead.

16 MR. EVANS: He says he hears she's, quote,
17 hammered, I think is the phrase he used. She's hammered.
18 He follows Mr. Filbeck up there, and Mr. Filbeck says
19 they goes in the room. He sees her in the room naked.
20 He said in his statement -- she said she was drinking
21 Ciroq vodka. He confirmed there was bottle of vodka, and
22 he said there was only a little bit left. In his
23 statement to Detective Bailey, he said there was only a
24 little bit left in the Ciroq bottle.

25 He also said in his statement, I'm kind of

1 paraphrasing, I guess, You drank all that? She passed
2 out. He says that at one point in his statement. She
3 was treated at Roper Hospital for alcohol intoxication.
4 This is after the incident, so there would have been
5 circumstantial evidence that before Mr. -- before the
6 defendant has interaction with her, she is severely
7 intoxicated.

8 After they draw blood three hours after she's
9 taken to the hospital, the nurse from Roper Hospital
10 testified that 300 milligrams per deciliter blood alcohol
11 content is the toxic range, and Ms. |. had .264, 264
12 milligrams, so she was right there close to the toxic
13 range for alcohol consumption, and based on that being
14 three hours after her contact with the defendant, we have
15 direct evidence that she was severely intoxicated based
16 on when this testimony -- immediately after when
17 Mr. Rumsey makes contact with her, when she's at the
18 hospital --

19 THE COURT: Not two hours. Key number 189
20 was used at 10:25, okay? 911 call went out at, what,
21 11:38, she was checked into the hospital at 12:35. So
22 the alleged rape had to occur between 10:25 and, let's
23 say, 11 o'clock based on what's been testified, where
24 they found her, et cetera, et cetera, et cetera,
25 somewhere during that time period, so approximately an

1 hour and a half later, she was at the hospital, okay?
2 Not two hours.

3 MR. EVANS: I apologize, Your Honor. So,
4 regardless, immediately before her contact with the
5 defendant, we have people that directly testifying she
6 was severely intoxicated.

7 THE COURT: At 8:00.

8 MR. EVANS: Yes, sir.

9 THE COURT: Not immediately before. 8:00.

10 MR. EVANS: And for purposes of a direct
11 verdict motion, the Court is just supposed to weigh the
12 existence or nonexistence of evidence. I think what's
13 happening is the balance of the weight here --

14 THE COURT: The test is whether it's more
15 than a mere suspicion, whether there's appropriate
16 evidence that would take it beyond suspicion, okay?

17 MR. EVANS: And I would submit to the Court
18 there is substantial existence of circumstantial evidence
19 that not only shows and corroborates the defendant's
20 statement there was a sexual battery, but also that the
21 jury could draw an inference that the victim was mentally
22 incapacitated and/or physically helpless.

23 THE COURT: Let me ask you some questions
24 about the mental incapacitation based on the testimony I
25 heard.

1 As I said earlier, the three parties went
2 into her room at -- I don't remember the time. It was
3 10 --

4 MR. SMILEY: 21, I believe.

5 THE COURT: 10:21 is when the witness --
6 what's his name?

7 MR. EVANS: Filbeck, Your Honor?

8 THE COURT: Mr. Filbeck, the defendant, and
9 his wife went into the room. When they went into the
10 room, apparently she jumps out of bed. Hears them come
11 in the room, comes to the foot of the bed, and is naked.

12 They exit the room, all three of them. The
13 defense testimony was he sees her standing out on the
14 balcony wrapped in a towel outside the room. That's
15 approximately at 10:20, 10:25, okay?

16 MR. EVANS: Yes, sir.

17 THE COURT: Now, at 12:25 she goes to the
18 hospital and gives the details, her name, her address,
19 all the information. They run a test on her. The only
20 valid test on her capacity was done at 12:35 or shortly
21 thereafter when she was admitted to the hospital, and she
22 was competent. She was physically able to -- she was
23 mentally able to communicate.

24 If somebody is incapacitated, you don't wake
25 up when you walk in the room, jump up, go to the foot of

1 the bed buck, naked put a towel on, and have the presence
2 of mind to put a towel on and go outside. Please tell me
3 where you have something on the time in question between
4 10:25 and 11:00, 11:15, when the rape allegedly occurred
5 that would show that she was incompetent or whatever you
6 want to say, incompetent or lifeless -- she wouldn't be
7 lifeless because she jumped out of bed.

8 MR. EVANS: Well, I think there's an
9 important distinction to draw between -- there are two
10 prongs in the statute that I think this case would fit
11 under: One is mentally incapacitated, and I would submit
12 under the statutory definition, which states that person
13 is rendered temporarily incapable of appraising or
14 controlling his or her conduct, whether this condition is
15 produced by onus, defect, influence of a substance or
16 other cause, I don't think the legal definition
17 specifically means she has to be passed out.

18 THE COURT: I don't think it does either. I
19 got an emergency room nurse and emergency room doctor
20 that says at 12:35 she's fine, and they're saying an hour
21 and a half later, she's acting incapacitated with no
22 testimony.

23 MR. EVANS: I don't think they're making a
24 legal finding that she's not physically --

25 THE COURT: And making a medical finding.

1 MR. EVANS: I think that's a question the
2 jury has to determine.

3 THE COURT: You got to get by me first, okay?

4 MR. EVANS: I understand that, and I believe
5 that we've got -- there's sufficient circumstantial
6 evidence before -- and I understand Your Honor's concern,
7 that the timing of this leaves a gap. I understand that,
8 and that's just kind of the nature --

9 THE COURT: Well, this gap is, is toxicology,
10 and you had an opportunity to call a toxicologist and you
11 didn't. That was your decision. That's what leads to
12 the gap, on how this alcohol affects the mental capacity.
13 That's where the gap is.

14 MR. EVANS: I don't think a toxicologist
15 would be able to tell because it's so specific to a
16 person.

17 THE COURT: I don't know. You have to talk
18 to them to find out. I don't know if you tried to talk
19 to them and they say you don't have a case and you
20 decided to not call one, I don't know. I'm not trying to
21 prejudge what you did or criticize what you did. I'm
22 just saying what I've heard.

23 MR. EVANS: Your Honor, I think there is
24 sufficient evidence in the record for the jury to make
25 that determination because of the testimony of people who

1 had contact with the victim before the incident --

2 THE COURT: At 8:00 and at 10:21 when they
3 went in the room -- when did three people go in the room?

4 MR. SMILEY: They went in at 10:21.

5 MR. EVANS: And Mr. Rumsey had contact with
6 her about 10:30.

7 THE COURT: Was she incapacitated when they
8 went into the room at 10:21?

9 MR. EVANS: I think that's for the jury to
10 decide.

11 THE COURT: I didn't ask you that. I said,
12 according to the testimony, was she incapacitated? She
13 jumped up out of the bed, stood at the foot of the bed,
14 and was standing there naked. Then she goes and wraps a
15 towel around her and goes out in the hall. Is that
16 incapacitated?

17 MR. EVANS: Your Honor, I believe under the
18 legal definition of the statute, I believe a jury could
19 find that, yes, sir, and I also believe that physically
20 helpless also would apply to this as well, and I believe
21 a jury could find under our statutes that the victim was
22 physically incapacitated -- excuse me, mentally
23 incapacitated and/or mentally helpless at the time the
24 assault took place.

25 I believe that's a question the jury could

1 find, and I think there is sufficient evidence on the
2 record for them to reasonably infer that she was, and I
3 think that's why they need to decide that question.

4 THE COURT: All right. Thank you very much.
5 Anything in reply?

6 MR. SMILEY: The only thing I would add in
7 reply, very, very briefly, is when she first got to the
8 hospital, they did the Glasgow coma test and she was
9 normal, and unless she had an abrupt recovery, their
10 determination, when she first reached the hospital --

11 THE COURT: Taking the evidence most
12 favorable to the non-moving party, which, in this case,
13 is the State, what do you think they have, circumstantial
14 or direct, to show that she was either -- and I'll just
15 quote the statute: She was either, as he says, mentally
16 defective, mentally incapacitated, or helpless?

17 MR. SMILEY: I don't think they have
18 anything, quite frankly.

19 THE COURT: You know your case. What do you
20 think would indicate to the jury, circumstantial or
21 direct, that she was having one of those three problems
22 and he knew or should have known?

23 MR. SMILEY: If I could start backwards, knew
24 or should have known. He never saw her until he got to
25 the room. He had heard a rumor that she had embarrassed

1 herself and was intoxicated, and it was about 7:00,
2 Judge. It was earlier than 7:00, 7:30, before she went
3 up to the room.

4 There's his statement that he saw a bottle of
5 peach Ciroq, but that was after the sex, and I think
6 that's important, after they allegedly she had sex,
7 because, if you remember --

8 THE COURT: The marijuana came after sex too,
9 right?

10 MR. SMILEY: Yes, sir, yes, sir. It was
11 after sex, because they had sex right -- within five
12 minutes of him coming back in, according to his
13 statement, Your Honor. She testified herself that she
14 had two drinks, a third drink, and that's assuming she
15 drank too, Judge, is she communicated with Mr. Filbeck
16 when they were leaving. She knew her room number. She
17 opened the door.

18 She might have been intoxicated, but she
19 certainly had the mental capacity to manipulate a lock
20 that I have trouble with all the time, but to get in. She
21 walked to the elevator. Yes, she allegedly fell down in
22 the elevator when Mr. Filbeck and her were alone. She
23 knew her room number. She also had enough presence of
24 mind, Your Honor, to say, I want to go back to my room.
25 I might be embarrassing myself, so she had some

1 self-awareness at that time, but then there is a delay,
2 and I'm going to use 8:00, just because there's no doubt
3 that she's back in the room by 8:00. I think it's closer
4 to 7:30, but using 8:00, between 8:00 and 10:21, there
5 is -- she's allegedly asleep, Your Honor.

6 There is no testimony that she imbibed any
7 more while she's there. There is no testimony
8 whatsoever, and, again, when they came in the room, she
9 became alert, whether it was -- Mr. Filbeck said he did
10 not, but assuming he did, because we have testimony
11 otherwise, either way, she was alerted to the door
12 opening, which means she was not incapacitated physically
13 or mentally. Responded to that.

14 She got out of the bed and moved, not just
15 got up, she moved to the foot of the bed where she could
16 be seen from the door, so she certainly was physically
17 able to move and has self-awareness. She also was
18 self-aware with what was going on, that someone was
19 coming in the room because she got up. Then we don't
20 know if she imbibed anymore after the sex and marijuana
21 with Mr. Middleton, but we know an hour -- 45 minutes to
22 an hour goes by before she's standing before the service
23 elevator. When she gets to the hospital, which is
24 quickly, Your Honor, within 20 -- I mean, the police got
25 this --

1 THE COURT: The 911 call was --

2 MR. SMILEY: 11:38, I believe. She's at the
3 hospital by 5 after 12:00, I believe. Within that period
4 of time that she's there, she gives things that -- she
5 gave them her family physician. She told them the
6 medication she was on, Ativan. She told them about her
7 prior ACL injury. She told them about her social
8 history, that included binge drinking and drugs, but she
9 told them the history of her social history, and they
10 did, which is important, the Glasgow score right then and
11 there, and the testimony was she was alert.

12 Also, I asked them and -- and this moves over
13 to the second part, just a little bit, Your Honor, if I
14 could just address it in that area.

15 I asked the nurse that was on there to find
16 anywhere in that report where she saw she was sexually
17 assaulted, and we sat there for a couple of minutes and
18 she doesn't answer. It's not in here, so for both those
19 reasons, Your Honor, I would say they have not
20 demonstrated that she's shown any evidence of her mental
21 incapacitation or that she physically was incapacitated.

22 She was walking. She got up out of her bed.
23 Even as she responded to the knock on the door, she
24 answered the questions of the hospital personnel when she
25 got there, actually got through cross-examination with

1 Detective Bailey, but she was answering the questions
2 from Officer Johnson, the first reporting officer on the
3 scene, so she is talking back and forth. She certainly
4 had -- they have not shown mental incapacity or physical
5 helplessness at this point in time.

6 THE COURT: All right. Thank you very much.
7 I'm going to take it under advisement.

8 Are you ready to call your first witness?

9 MR. SMILEY: Yes, sir.

10 THE COURT: All right.

11 MR. SMILEY: And it's just going to be one
12 witness.

13 THE COURT: Mr. Middleton, if you'll stand.

14 Yesterday I asked you and informed you about
15 your Fifth Amendment right, and I asked you whether or
16 not you wanted to testify. Are you going to testify or
17 not testify?

18 THE DEFENDANT: No, sir, not going to
19 testify.

20 THE COURT: You're not going to testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Has anybody promised
23 you or threatened you --

24 THE DEFENDANT: No, sir.

25 THE COURT: -- between yesterday and today to

DARNELL JOHNSON - DIRECT EXAMINATION

1 make you not testify?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you understand your right to
4 testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you understand your Fifth
7 Amendment rights to remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Thank you very much.
10 Bring the jury.

11 (In open court, jury present.)

12 THE COURT: Call your first witness, please.

13 MR. SMILEY: I would call former Officer
14 Darnell Johnson to the stand.

15 DARNELL JOHNSON,
16 having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SMILEY:

20 Q. Mr. Johnson, if you'll slow down just a little bit
21 for us, you're a fast talker, and the court reporter has
22 to take down everything. I'm bad about that, so please
23 keep that in mind.

24 Officer Johnson, are you here by subpoena
25 today?

1 A. Yes, sir, I am.

2 Q. And did I subpoena you?

3 A. Yes, sir.

4 Q. All right. Where do you live now?

5 A. I live in Orangeburg County.

6 Q. What are you doing for a living now?

7 A. I'm currently on -- I'm currently on a leave of
8 absence, but I also own a full-service landscape company,
9 so I do that as well.

10 Q. Does that leave of absence have to do with your
11 family?

12 A. It's personal, just a personal break.

13 Q. Okay. Very good. Were you in the military?

14 A. Yes, sir.

15 Q. Will you tell the jury about that.

16 A. Four years United States Marine Corps and I served
17 four years with the South Carolina National Guard as
18 well.

19 Q. Were you separated from the Marine Corps with an
20 honorable discharge?

21 A. Yes, sir.

22 Q. How long have you been -- were you a policeman?

23 A. Combined total, 12 years.

24 Q. And how long were you at North Charleston?

25 A. Slightly under two years.

1 Q. When did you leave North Charleston?

2 A. I left North Charleston sometime -- I believe, if
3 I'm not mistaken, sometime in 2015. I actually went on a
4 study abroad for my continuing education from Claflin
5 University at the time and went to England for almost a
6 month or two.

7 Q. All right. Very good. You were with North
8 Charleston, what was your rank?

9 A. I was a patrolman first class.

10 Q. Okay. Is that -- you wore the uniform?

11 A. Yes, sir.

12 Q. And had a car, and you were a responding officer
13 on the street?

14 A. Yes, sir.

15 Q. I'm going to turn your attention to December --
16 let me ask you this: In preparation for today, were you
17 supplied a copy of a report?

18 A. Yes, sir.

19 Q. And you reviewed that before you came here today?

20 A. Yes, sir.

21 Q. And did you have an occasion to be called to the
22 Embassy Suites on the night of December 14th, 2013?

23 A. Yes, sir, that's correct.

24 Q. All right. And what were you called there for?

25 A. I was actually dispatched to a call in regards to

1 an alleged sexual assault.

2 Q. Okay. What time were you dispatched?

3 A. I was dispatched at 2328, which is 11:38 p.m. in
4 the evening.

5 Q. Do you remember or does your report tell you when
6 you arrived?

7 A. Yes, sir, absolutely. Actually, one minute later
8 I was assigned to Zone Five in the Montague area with --
9 I guess with the Outlets, in that general vicinity there,
10 so I hang out in that area a lot.

11 Q. Were you in a car by yourself that night?

12 A. Yes, sir.

13 Q. I know it's been a long time ago. Did a second
14 officer also come to --

15 A. Yes, sir.

16 Q. -- Embassy Suites? When you arrived at Embassy
17 Suites, what did you do?

18 A. Of course, protocol always has -- dispatch put us
19 on scene, let them know that we have arrived on location,
20 and pretty much start our investigation from there.
21 Slightly after that, I believe, as indicated in report, I
22 believe I was approached by Mr. Rumsey outside of the
23 hotel, actually meeting me as I was approaching the
24 hotel.

25 Q. After you have met with Mr. Rumsey, where did you

1 go?

2 A. We proceeded to, I believe, one of the management
3 offices.

4 Q. When you were in the management offices, did you
5 meet with someone?

6 A. Yes, sir.

7 Q. And who was that?

8 A. She was identified as Ms. Kayla |. .

9 Q. All right. And so you made contact with Ms. Kayla
10 |. within a couple of minutes of the dispatch of 911,
11 got there within a minute, met with Mr. Rumsey, and were
12 in a room with her, correct?

13 A. Yes, that's correct.

14 Q. When -- I'm going to ask you to describe her
15 mental acuity to the jury. Was she able to talk with
16 you?

17 A. Absolutely. She was able to talk, and she was
18 able to answer the majority, if not all, of my questions
19 at the time when I asked her, and I asked her the
20 questions repeatedly, I would say even more than three or
21 four times.

22 Q. One of the questions you asked her is if she had
23 been assaulted; is that correct?

24 A. That's correct.

25 Q. What was her answer?

1 MR. EVANS: Objection, Your Honor. Hearsay.

2 THE COURT: Overruled.

3 BY MR. SMILEY:

4 Q. What was her answer?

5 A. Her answer was no, repeatedly.

6 Q. When you say repeatedly, was she being forceful
7 about that, saying, No, I wasn't, or was it otherwise?

8 A. She seemed to get a little attitude-ish because I
9 kept on asking a question, and then I kind of backed off.
10 I said maybe if I get a couple females out here with me
11 in regards to the EMS personnel, kind of wait until they
12 got there and allow them to kind of assist me to get that
13 portion, and her attitude was still negative.

14 Q. She was able to give you her name, correct?

15 A. Yes, sir.

16 Q. She answered your questions. Did she tell you
17 about some other incident?

18 A. She -- if I'm not mistaken, according to the
19 report, she was speaking of some form of altercation, it
20 was either verbal or physical at the time, but nothing
21 that relates to a possible sexual assault.

22 Q. Okay. Did she -- after speaking with her, what
23 did you do next?

24 A. I immediately -- well, of course, per department
25 protocol at the time, notified EMS or notified

1 supervisors, which was Sergeant Steven Evans at the time
2 and Lieutenant Bowman was watch commander for the
3 evening, establishing -- while at the same time get EMS
4 en route to the location as well.

5 Q. When EMS arrived, what happened?

6 A. If I remember correct, EMS almost -- it appears
7 they had to almost coerce her to go with them because she
8 wasn't an active participant or even willing to go with
9 them at the time, but, actually, I said, You need to go
10 get checked, if this is what you're alleging. I wasn't
11 there, but --

12 Q. But she wasn't alleging the sexual assault?

13 A. No.

14 Q. She was alleging a different kind of assault?

15 A. That's correct.

16 Q. And she described -- what was your view of her
17 intoxication level when you arrived?

18 A. I did notice she had an odor of alcohol coming
19 from her person. I didn't pass any judgment because just
20 because she had an odor of alcohol coming from a person
21 doesn't make her incompetent to answer any questions that
22 is coming before her.

23 Like I said, I didn't think nothing more of it,
24 except I'm just following the lead on every answer she
25 provided to me, so just continue to gather as much

1 information as she's willing to provide to me
2 voluntarily.

3 Q. Okay. As a result of your speaking with the young
4 lady -- and another officer had arrived?

5 A. Yes, sir.

6 Q. Did you or someone else direct the officer to do
7 anything more?

8 A. If I recall -- I believe I went to the hotel while
9 still doing my officer victim interview at the time, yes,
10 sir.

11 Q. You never went up to any hotel room, right?

12 A. No, sir.

13 Q. And that's because she told you there wasn't a
14 sexual assault, right?

15 A. Yes, sir. I have no reason to believe anything
16 other based on what she was telling me happened.

17 Q. In your interaction -- in talking with her, at any
18 point in time, did she appear not to understand your
19 questions?

20 A. Absolutely not. She was fully coherent the entire
21 time.

22 Q. Okay. What was her -- as you said, when she was
23 denying the sexual assault, she was a little stern, but,
24 overall, your interaction with her how, did she come
25 across to you?

1 A. She came off as -- I'm trying to find the right
2 word. Over-friendly, super-friendly, even go as far as
3 gullible. Even with Mr. Rumsey, we had to almost, like,
4 peel her off of him.

5 Q. Touchy-feely?

6 A. Absolutely.

7 MR. SMILEY: Beg the Court's indulgence.
8 Just a couple more.

9 BY MR. SMILEY:

10 Q. The verbal altercation that she described to you,
11 did she give a general description of the person that did
12 that?

13 A. Yes, sir. She said an unknown black male with a
14 light blue color shirt. That's all she gave me. She
15 didn't give me the physical attributes, any names or
16 anything else, just -- it could have been a surrounding
17 guy, actually.

18 Q. All right. Now, you and I, we spoke for the first
19 time last Friday?

20 A. I believe it was Friday, yes, sir.

21 Q. Other than that brief contact on the phone,
22 speaking to you briefly out here, that's the only contact
23 you and I have had, correct?

24 A. That's correct.

25 Q. Mr. Middleton, you've never met him, have you?

1 A. Not a day in my life, no, sir, besides -- well, I
2 saw him today, yes, sir.

3 MR. SMILEY: Very good. That's all I have.

4 THE COURT: Cross-examination?

5 MR. EVANS: Yes, sir. May it please the
6 Court:

7 CROSS-EXAMINATION

8 BY MR. EVANS:

9 Q. Mr. Johnson, you said you don't work at North
10 Charleston anymore.

11 A. No, sir.

12 Q. And you resigned in 2015?

13 A. That's correct.

14 Q. And you actually reapplied at that time?

15 A. Yes, sir.

16 Q. You reapplied there, right?

17 A. Yes, sir.

18 Q. Now, you said you own a landscaping company?

19 A. That is correct.

20 Q. So your role in this incident, you were just the
21 responding officer there at part of the scene, correct?

22 A. First responding investigating officer, that's
23 correct.

24 Q. But your rank was patrolman first class. That was
25 the initial rank you had when you started working,

1 correct?

2 A. No, sir. You are actually an officer.

3 Q. But you weren't a detective, right?

4 A. No, sir.

5 Q. You weren't an SVU detective, right?

6 A. No, sir.

7 Q. You didn't regularly investigate CSC cases, did
8 you?

9 A. No, sir.

10 Q. Had I mentioned there were other -- you were the
11 one that wrote the incident report; is that correct?

12 A. That's correct.

13 Q. And there were no other supplements from
14 responding officers; is that correct?

15 A. I'm not quite sure.

16 Q. You're the only one that wrote this report?

17 A. That's correct.

18 Q. When you were in contact with the victim, you
19 could tell she was clearly intoxicated, couldn't you?

20 A. Like I said, a strong odor of alcohol does not
21 indicate intoxication.

22 Q. You wrote in your report she was slurring her
23 words, correct?

24 A. Yes, sir.

25 Q. And she was stumbling, correct? That's on the

1 second page of your report, about three quarters of the
2 way down.

3 A. Yes, sir.

4 Q. So she was stumbling around and slurring her
5 speech; is that correct?

6 A. Yes, sir.

7 Q. And she smelled like alcohol beverages?

8 A. Yes, sir.

9 Q. And she was pretty confused, wasn't she?

10 A. I can't say she was.

11 Q. You had to ask her the same question multiple
12 times, correct?

13 A. Absolutely.

14 Q. And she told you she didn't remember anything,
15 didn't she?

16 A. She said she didn't remember anything as it
17 relates to a sexual assault. That was another question I
18 was asking her at the time.

19 Q. She also told you she didn't remember anything?

20 A. According to my report as well --

21 Q. Mr. Johnson, I don't want to interrupt you. I'm
22 not trying to trick you. Just answer my question. Did
23 she tell you she didn't remember anything? If you go
24 about halfway down the second page of your report.

25 A. Would you restate your question, please.

1 Q. She told you she didn't remember anything,
2 correct?

3 A. That's correct.

4 Q. And, obviously, you're a male officer. Mr. Rumsey
5 who worked in the hotel, he's a male, correct?

6 A. That's correct.

7 Q. And the other responding officers are males,
8 correct?

9 A. Correct.

10 Q. So all the officers that talked to her at once,
11 these were all male, correct?

12 A. Yes, sir.

13 Q. All right. So y'all didn't send anybody to the
14 hospital with the victim, did you?

15 A. Once protocol is established, sir, department
16 protocol requires that the department actually notifies
17 victim advocates once cause is actually established,
18 wheels get to turning, if I'm not mistaken.

19 Q. You didn't go to the hospital with the victim?

20 A. No, sir.

21 Q. You didn't follow up and do a statement from her
22 at the hospital, did you?

23 A. No, sir.

24 Q. And you said you didn't even go up to the hotel
25 room yourself?

1 A. No, sir.

2 Q. And --

3 A. What was given to me --

4 Q. Mr. Johnson, that's not what I'm asking.

5 MR. SMILEY: Objection, Your Honor. I think
6 he ought to be able to explain.

7 THE COURT: You may explain your answer. Go
8 ahead.

9 THE WITNESS: Thank you. Given a lot of
10 questioning that I actually asked the victim at the time
11 that she denied repeatedly the sexual assault, I had no
12 reason to go to an alleged crime scene because at that
13 point it's kind of hard to target a crime scene as it
14 relates to a verbal or physical altercation, and, for the
15 record, I'm not the one on trial, so please keep your
16 questions within the scope of what we're doing today.

17 BY MR. EVANS:

18 Q. We're just trying to talk about what happened that
19 night.

20 A. That's fine. If you want to talk about my
21 character, I also possess a master's degree in criminal
22 justice.

23 Q. I didn't ask you that question. Please respond to
24 only the questions I ask.

25 MR. EVANS: Will you instruct the witness to

DARNELL JOHNSON - CROSS-EXAMINATION

1 do that, please?

2 THE COURT: Ask your question.

3 MR. EVANS: Yes, sir. Thank you.

4 BY MR. EVANS:

5 Q. But you knew she was staying at the hotel,
6 correct?

7 A. You said did you know she was staying at the
8 hotel?

9 Q. Yes.

10 A. I had no prior knowledge, no.

11 Q. You knew her name, right?

12 A. Yes, sir.

13 Q. And you didn't see if she was booked at the hotel,
14 did you?

15 A. No, sir.

16 Q. And you didn't look up if she was booked at the
17 hotel what room she was booked into, did you?

18 A. No, sir.

19 Q. And you didn't go up to the hotel room because you
20 didn't know where she was staying, right?

21 A. What's your name, sir?

22 MR. EVANS: Your Honor.

23 THE COURT: What was your question?

24 THE WITNESS: What is his name?

25 THE COURT: Ask the question and answer the

1 question. If you want to give an explanation, you can do
2 that. Don't ask him questions. Listen to the question,
3 answer it, and I'll give you time to explain it.

4 THE WITNESS: I just want to apply respect.

5 BY MR. EVANS:

6 Q. My name is Mr. Evans. You can call me Mr. Evans.

7 A. Perfect.

8 Q. So since you didn't go up to the room, you didn't
9 see the crime scene up there either?

10 A. No, sir. I had no reason to, sir.

11 Q. Okay. And you stated on your direct that you
12 would describe Ms. |. as, quote, super friendly,
13 right?

14 A. Yes, sir.

15 Q. Quote, gullible?

16 A. Yes, sir.

17 Q. And touchy-feely?

18 A. Yes, sir.

19 Q. Can you show me where in your incident report you
20 wrote either of those three phrases?

21 A. Yes, sir. Initially, I did have it in my report,
22 but a supervisor does have overriding authority to go
23 into that report to change what he or she deems
24 necessary, and just for reporting purposes, so it was in
25 my report; however, this report has since been redacted

1 and changed prior to the printing of this report and
2 prior to the supervisor actually signing off on it.

3 Q. Did you write any of this report or was it all
4 changed?

5 A. No, sir, I wrote this report.

6 Q. All of it?

7 A. Yes, sir.

8 Q. Except for the portions someone else told you to
9 change.

10 A. Yes, sir, and it's not uncommon with the North
11 Charleston police department.

12 Q. You reapplied to work there?

13 A. Correct, yes.

14 THE COURT: Asked and answered.

15 THE WITNESS: I left in good standing.
16 Absolutely.

17 BY MR. EVANS:

18 Q. At the end of the night, you coded the case a
19 forceful rape, correct?

20 A. Yes, sir.

21 Q. And you wrote at the end that you're referring
22 this to investigations for -- or referred to
23 investigation, correct?

24 A. Well, actually, I first coded it in the report and
25 then was told by my supervisor again to label it

1 according to the UCR codes in our system, uniform crime
2 reporting report, so it doesn't matter what the call is.
3 If it comes in as a burglary, it's coded as a burglary.
4 If it comes in as an alleged assault, it's coded as an
5 alleged assault, whether it occurred or not. You code it
6 based on the allegation of the call that came into
7 dispatch.

8 Q. And then you recommended it be referred to
9 investigations, correct?

10 A. Only because department protocol states that --

11 Q. Is that correct?

12 A. That's correct, but with explanation. Normally
13 with a case like this, I would recommend it to
14 administratively close it myself; however, because
15 department protocol took priority and there's officer
16 discretion in certain types of cases, this case actually
17 had to be forwarded to investigations for further review.

18 Q. And that's because special detectives are trained
19 to specially investigate rape cases, specially
20 investigate rape cases, correct?

21 A. Not necessarily.

22 MR. EVANS: Beg the Court's indulgence.

23 Thank you, Your Honor. I don't have any
24 further questions.

25 THE COURT: Redirect?

1 MR. SMILEY: No, sir.

2 THE COURT: You may step down. Thank you
3 very much.

4 MR. SMILEY: I ask that he be excused from
5 his subpoena, of course.

6 THE COURT: Any objection from the State?

7 MR. EVANS: No objection.

8 THE COURT: Mr. Johnson, you may be excused.
9 Thank you so much.

10 You want to call your next witness?

11 MR. SMILEY: Defense rests, Your Honor.

12 THE COURT: Okay. Do you have any reply
13 testimony?

14 MR. EVANS: Your Honor, we do not.

15 THE COURT: All right. Ladies and gentlemen:
16 It's about 20 minutes to 4:00. The only thing left would
17 be closing arguments by the attorneys, and I'll charge
18 you on the applicable law in this case, and I don't know
19 how long that will take, or how long the attorneys are
20 going to make their arguments, but that may consume an
21 hour, hour and a half, two hours.

22 I just don't know, so we're going to adjourn
23 this afternoon and reconvene in the morning at 10 o'clock
24 because I need to take up some motions and some other
25 matters with the attorneys before we have closing

1 arguments and the charge. So if you'll be back in the
2 jury room at 10 o'clock in the morning, we'll hear
3 closing arguments and the charge. Please don't discuss
4 the case among yourselves, and we'll see you tomorrow.
5 Thank you very much.

6 (In open court, jury not present.)

7 All right. Any motions? I mean, I got your
8 motion under advisement. I assume you renew your motion?

9 MR. SMILEY: Yes, sir, and adding
10 Mr. Johnson's testimony to what has already been argued.

11 THE COURT: As I said, I've got that under
12 advisement. I'll rule when I'm ready to rule. I want to
13 read the two cases you've handed up because I hadn't have
14 an opportunity to read them yesterday, so that's under
15 advisement.

16 I'll notify you in the morning about my
17 decision, okay? All right. He's gone. What I thought
18 we would do this afternoon, while we have time, is have
19 an informal charge conference. Y'all have any requests
20 for charge?

21 MR. EVANS: Your Honor, I would just request
22 that the specific language in the statute be charged. I
23 don't have anything other than that.

24 THE COURT: Okay. Do you have anything
25 specific?

1 MR. SMILEY: Not specific at the moment, no,
2 sir.

3 THE COURT: All right. He's going to get the
4 charges. He left it downstairs. If y'all want to come
5 up here, I can show you the verdict form.

6 (Recess taken.)

7 (October 26, 2017.)

8 (In open court, jury not present.)

9 THE COURT: All right. Are we ready to
10 proceed?

11 MR. SMILEY: Yes, sir.

12 THE COURT: Anything from the State before we
13 bring the jury?

14 MR. EVANS: No, sir.

15 THE COURT: All right. Taking the evidence
16 in the light most favorable to the non-moving party at
17 the directed verdict stage, the directed verdict is
18 denied.

19 Y'all ready for closing arguments?

20 MR. EVANS: Yes, sir. My co-counsel might
21 have stepped out. Let me check real quick, but other
22 than that, we're ready.

23 THE COURT: All right.

24 All right. Is the State and defendant ready
25 to bring the jury?

1 MR. EVANS: State's ready, Your Honor.

2 THE COURT: All right. Bring the jury,
3 please.

4 (In open court, jury present.)

5 THE COURT: Thank you very much. Please be
6 seated.

7 Solicitor?

8 MR. EVANS: Thank you, Your Honor. May it
9 please the Court:

10 Ladies and gentlemen: This case may not
11 involve what you thought of as a rape before you took a
12 seat on the jury this week. You might have thought a
13 rape was only when someone is waiting down a dark alley
14 for a stranger to wander by, but make no mistake: Under
15 the laws of the State of South Carolina and under the
16 facts of this case, this was a rape, and the defendant is
17 no less of a predator than somebody waiting down that
18 dark alley for a stranger to walk by.

19 I want to cover the testimony again with you
20 briefly because I know it's been kind of a long trial
21 this week. The first day you heard from Mr. Rumsey who
22 flew in from Denver to testify. He told you about how
23 when he was working at the desk that night a black male
24 came down to the front desk, claimed he was Kayla's
25 boyfriend, and wanted a copy of room key 403. He did not

1 testify that the defendant said, Kayla's locked out of
2 her room. He didn't remember that because it didn't
3 happen, but, unfortunately, he gave the defendant a copy
4 of Kayla's room key, and then a few minutes later, he
5 found Kayla wandering in the back hallway.

6 He said she was clearly intoxicated. She was
7 distraught, and when he was finally able to get a
8 coherent statement out of her, the first thing she said
9 was, I was raped.

10 You also heard testimony from Kayla, and
11 Kayla was honest with you. She said I had too much to
12 drink. You saw her. She's a small girl, I think she
13 said about 115 pounds, about five foot six. She was
14 drinking half vodka, half Sprite, and she testified she
15 had at least four drinks that we heard. She testified
16 three. I think Mr. Filbeck added a fourth, so at least
17 four drinks, half vodka. Said she wasn't a regular
18 drinker back then, so use your common sense. Somebody
19 that size who hadn't eaten recently who was drinking that
20 much, it's going to get you pretty drunk, and we know she
21 got pretty drunk because she doesn't remember most of the
22 night.

23 She testified she was incapacitated. She
24 testified she was not in a state of mind to consent to
25 sexual intercourse, and she did not consent to sexual

1 intercourse, and she did not consent to sexual
2 intercourse with the defendant.

3 You also heard Ms. Alston testify on Monday
4 she was a friend and coworker of Kayla, and she told you
5 when she arrived at the party, she noticed immediately
6 that Kayla was too drunk, and eventually she told Kayla,
7 You know what? You're kind of embarrassing yourself.
8 You've had way too much to drink. You need to go back to
9 your room and go to bed.

10 You also heard Mr. Filbeck testify for you.
11 Mr. Filbeck was kind of a good Samaritan in this case,
12 someone Yolanda and Kayla clearly trusted to take her
13 back to her hotel room, and Mr. Filbeck sort of tucked
14 Kayla into bed and promised he would come back and check
15 on her before he left for the night, and he was concerned
16 too because he could tell she was too drunk. She
17 literally fell down in the elevator and was having to
18 sort of lean on him for support to get to her room, so he
19 could tell she was too drunk.

20 She also testified later in the night he came
21 back with his wife to check on Kayla, and that's when
22 they noticed the defendant following him into the room.
23 He said it was kind of strange. He didn't say anything
24 on the elevator. He said he waited for the defendant to
25 press the button because he didn't know where he was

1 going, and he sort of tagged along, didn't say anything,
2 tagged along until they got to Kayla's room, and that's
3 when they sort of startled her out of bed. She was nude,
4 because that's how she slept sometimes back then, and he
5 immediately closed the door -- put the key down and made
6 sure he closed her door on the way out.

7 He also said he did not hear Kayla come back
8 out of her room. He did not hear Kayla say anything
9 like, Wait, Jimmie, wait. I'm so embarrassed. She did
10 not follow him to the elevator, and he did not see her
11 locked out of her room while they were going down.

12 He did see the defendant, without saying a
13 word, jump off the elevator as the doors were closing,
14 and because he had securely locked her in her room, he
15 really didn't think anything of it, and he went home.

16 It's also important and I want you to
17 remember where Mr. Filbeck testified everybody was
18 standing on the elevator when they got back in. Mr.
19 Filbeck said he was standing in the front of the elevator
20 by the buttons. His wife was standing in the back, and
21 the defendant was standing sort of next to him, but on
22 the right, so we've got the defendant, Mr. Filbeck.
23 Kayla's room is on this side. There is no way, based on
24 Mr. Filbeck that he could have seen Kayla standing
25 outside of her room, and that's important when I go back

1 through his statement.

2 You also heard testimony from Mr. Delis who
3 works at Embassy Suites. He was helpful with the police
4 and he was also helpful explaining the room key for us.
5 Joye McElroy, who was the hospital nurse who treated and
6 released Kayla that night, she testified her blood
7 alcohol content was 264 milligrams per deciliter, and she
8 said at least 300 milligrams per deciliter is the toxic
9 range of alcohol consumption, so three hours after Kayla
10 arrived at the hospital, she still had a near toxic range
11 of blood alcohol consumption.

12 I think it's pretty common knowledge when you
13 stop drinking your BAC goes down, so we're talking about
14 four hours after the incident and three hours after she
15 arrives at the hospital she's still got a near toxic
16 range of blood alcohol intoxication.

17 You also heard from Dr. Gill-Hopple, the SANE
18 nurse, who reviewed the SANE exam that was performed.
19 She told you there were genital injuries noted, and she
20 told you lots of reasons why that could be. That's not
21 necessarily indicative of consensual sexual intercourse.
22 She told you late reporting is not unusual, and victims
23 kind of being unsure. Whether she wanted to go through a
24 report -- or go through an exam is not unusual in her
25 experience. She also noted the injuries, specifically to

1 Kayla's lower back, that she said was an abrasion, being
2 caused by rubbing and those big bruises on her thigh.

3 The detective, Rebecca Bailey, also testified
4 for you. Detective Bailey testified she was assigned to
5 the case a few days later. There hadn't been much or any
6 investigation done up to that point, and so she did a
7 good job speaking to the witnesses, gathering what
8 evidence was available at that time, including the key
9 report, the surveillance footage, and, finally, when she
10 interviewed the defendant, everybody was talking about
11 how drunk Kayla was. In his words, he used the term
12 hammered. He used that word several times. He was not
13 drunk. He only had two beers, and he said they had
14 sexual intercourse. He had sex with Kayla.

15 Ladies and gentlemen: I mentioned I wanted
16 to go through the defendant's statement with you, what he
17 told Detective Bailey. I think two things in that
18 statement are accurate: That he had sex with Kayla and
19 that they were on the floor of the hotel room.

20 I think the rest of that story is completely
21 false. I'm going to point out how the evidence
22 contradicts the statement. Remember, he did this
23 interview over two months after the incident so he had
24 plenty of time -- he knew he was caught once Kayla
25 started contacting him the next day, but he had plenty of

1 time to come up with his version of what had happened
2 that night. I want you to recall the defendant's version
3 of going to check on Kayla with Mr. Filbeck's version of
4 going to check on Kayla.

5 The defendant said they sort of went up there
6 together, that on the way back, Kayla was calling for
7 Jimmie. I'm so sorry, Jimmie, sort of chased him out of
8 the room and he said, Oh, I see her locked out of her
9 room. I'm going to go help her, and Jimmie said, We got
10 to go home or something to that effect. Jimmie was ready
11 to go home, so he wasn't going to help her. Remember
12 Mr. Filbeck: None of that happened. Defendant was just
13 tagging along, didn't say anything, and before he jumped
14 off the elevator, he didn't say a word.

15 He also lied to Mitchell Rumsey. He told
16 Mr. Rumsey he was Kayla's boyfriend and he needed a copy
17 of her room key. If Kayla had rightly been locked out of
18 her room, it would have been so much more simple to say,
19 My coworker is locked out of Room 403. Can y'all send
20 someone up there to go let her in? And he could have
21 gone home for the night. He said the party was already
22 over at that point. He didn't have any reason to lie if
23 he was really trying to help her get back into her room
24 because she was not locked out of her room.

25 Also, the sex on the ground thing. If Kayla

1 is going to have consensual intercourse with a random
2 coworker, she's not going to have sex with somebody on
3 the ground of a dirty, disgusting, random hotel room.
4 They didn't have sex on one of the couches that were
5 there or either of the two beds, double -- it was a
6 double queen room, so I think he had sex on the ground
7 with her, but I think she was not consenting to it
8 because she would not have consented to have sex on the
9 ground of the hotel room.

10 Also, the fact that he took a phone call from
11 his wife while he was in the room and he told Detective
12 Bailey, well, eventually, when he was pushed, he wasn't
13 really sure whether or not, did I step out of the room?
14 I can't remember, but he eventually said yeah, he took
15 the phone call while he was in the room, and he said he
16 wasn't worried about his wife hearing Kayla. He wasn't
17 worried about it because she was passed out while he was
18 on the phone.

19 He also sent Kayla a text message that you
20 saw. When she finally was able to figure out and
21 confronted him with it, he said, I'm so sorry. If he
22 didn't do anything wrong, what does he have to be so
23 sorry for? What does he have to apologize for? And he
24 said, I guess I was drunk. I was drunk. It should have
25 never happened, and he told Detective Bailey he wasn't

1 drunk. He only had two beers.

2 And maybe, most importantly, he told
3 Detective Bailey he took one of Kayla's room keys and he
4 left the room, I think he said, to get marijuana, and he
5 came back, and he said that would have been about 11:00.
6 Now, we know from the key report that that is not true.
7 This is Exhibit 2. You'll have this exhibit back there
8 with you.

9 We note, based on the timeline of the
10 testimony, key 188 was used on the door at 10:21 p.m.
11 Based on the testimony, that's when Jimmie, Mrs. Filbeck,
12 and the defendant would have come and seen Kayla. A
13 short time later, 10:25, a new key was new issued. We
14 know from the testimony that's the defendant's key, the
15 one he lied to Mitch Rumsey to get them.

16 You heard testimony that at 11:38 is when
17 North Charleston police department was dispatched and
18 arrived, so we know at that point Kayla is downstairs and
19 911 has been called, so we know she's not in the room
20 anymore. At 11:52, after the police arrive, key 191 was
21 used. This is a fourth room key. Mr. Rumsey says he
22 made copies for the officers, and that fits perfectly
23 into the timeline. 12:35 is when Kayla arrives at Roper,
24 according to Joye McElroy; 12:57, there's a room master
25 key, and we know from testimony those were the manager's

1 key, so the defendant wouldn't have had a manager key.
2 There's a nurses' note at 1:10 that basically Kayla was
3 asking for her pocketbook and phone, and they called up
4 the hotel, and the hotel went in and got it. So those
5 two room master keys are the manager going back in the
6 room to get Kayla's stuff, and at 8:15 a.m., key 192 was
7 used. That was another key for Kayla coming back from
8 the hospital the next morning.

9 There is no entry that on the key lock that
10 shows the defendant coming back in the room at 11:00,
11 when he said he did, around 11:00, and that's because
12 almost all his story is completely fabricated.

13 So I think it's very clear from the evidence,
14 looking at everything together, what actually happened
15 that night. I think the defendant was planning on this
16 from the moment he got to the party and heard everybody
17 talking about how drunk Kayla was, because, remember, she
18 wasn't there when he got there. He had no interaction
19 with her before he saw her in her hotel room, and he
20 clearly came to the party. He brought weed, and he
21 brought the condom. He said the party starts winding
22 down, and he still wants to party.

23 So he heard how drunk Kayla was. He decides
24 to go see for himself. Luckily, he bumps into Jimmie
25 Filbeck and his wife going to check on her, and lo and

1 behold, Jimmie got a room key. So when he opens the
2 door, he sees not only is she really drunk, she's naked.
3 That's when the wheel started turning for him, but Jimmie
4 and his wife were there, so he had to kind of get rid of
5 them too.

6 So he pretended to go back on the elevator
7 with them, and once the door starts closing, he knows
8 Jimmie and his wife are leaving. He jumps on the
9 elevator, and that's when he goes back and he knocks on
10 Kayla's door. She doesn't answer. She doesn't let him
11 in because she's incapacitated. She can't answer the
12 door.

13 So he decides, well, I guess I'm not going to
14 get to rape Kayla's tonight. I guess I better go home.

15 He has one more idea: Maybe if I go down to
16 the front desk, so he goes down to the front desk, and he
17 tells a complete lie. He admits this was untrue, that he
18 was Kayla's boyfriend. He needed a copy of her room key,
19 and, unfortunately, he got a copy of her room key.

20 So with that copy of the room key, and
21 knowing how drunk she was from everybody at the party, he
22 also told Detective Bailey that he saw she had a bottle
23 of Ciroq vodka and said there was about this much left in
24 it (indicating). He also mentioned to Detective Bailey
25 that's why she drank that much, because she passed out

1 in, his statement, and he realized with a copy of the
2 room key and the knowledge that she's grossly
3 intoxicated, incapacitated, that he can go upstairs and
4 he can rape her, and, unfortunately, that's what
5 happened.

6 I want to go over the law of criminal sexual
7 conduct in the third degree because it's a fairly nuanced
8 law, and it's probably not something you've had exposure
9 to before sitting on this jury. The law of criminal
10 sexual conduct in the third degree is South Carolina code
11 16-3-654, and it says someone completes a CSC third when
12 they engage in sexual battery with the victim, and if any
13 one or more of the following circumstances are proven:
14 The actor uses force or coercion to accomplish a sexual
15 battery in the absence of aggravating circumstances; or
16 the actor knows or has reason to know that the victim is
17 mentally affected, mentally incapacitated, or physically
18 helpless, and aggravated force or aggravated coercion was
19 not used.

20 Knows or has reason to know: Well, he
21 admitted to Detective Bailey everybody was telling him
22 how hammered Kayla was at the party, and he went upstairs
23 and saw for himself, so not only did he have reason to
24 know, but he also knew how incapacitated she was.

25 Sexual battery is in the statute. I don't

1 think that's really an issue here, but it's essentially
2 sexual intercourse. Remember, the defendant admitted
3 that he had intercourse. He admitted he had sex with
4 Kayla. Mentally incapacitated is defined under the
5 statute as temporarily incapable of appraising or
6 controlling his or her conduct, whether this condition is
7 produced by illness, defect, the influence of a
8 substance, or from some other cause. I submit to you
9 there is tons of evidence on the record that Kayla was
10 mentally incapacitated.

11 When we had all the testimony about how
12 grossly intoxicated she was before. When she made
13 contact with Mr. Rumsey, he said he could tell she was
14 grossly intoxicated. Even the defense's witness,
15 Mr. Johnson -- and I expect the defense is going to claim
16 we were trying to hide the ball by not following that
17 guy. You saw him testify. It got ridiculous. He didn't
18 add anything to the case. He was more interested in
19 talking about himself than he was talking about what
20 happened that night, but even he admitted she was
21 slurring her words and she was stumbling around, and then
22 we get to the hospital and we find out exactly how
23 intoxicated she was, and it's near toxic ranges, and also
24 the fact that Kayla has no recollection of this incident.

25 I think that might be the most profound

1 evidence of her mental incapacitation, and there's
2 another prong: Or if you find that she was physically
3 helpless, which is defined as unconscious, asleep, or,
4 for any other reason, physically unable to communicate and
5 unwillingness to act.

6 So if she is rendered unable to say, No, I
7 don't want to consent, she also may be physically
8 helpless, and I submit to you for the same reasons there
9 is substantial evidence on the record to that.

10 Ladies and gentlemen: You saw the witnesses
11 testify this week, and I think you could see that a lot
12 of the people involved in this case feel kind of guilty
13 about what happened. You saw Mr. Rumsey certainly feels
14 guilty about what happened, his role in it. You saw
15 Yolanda Alston get choked up a little bit. She feels
16 partially responsible for what happened. You saw
17 Mr. Filbeck get a little upset. He feels partially
18 responsible, and, of course, unfortunately, Kayla feels
19 responsible for what happened.

20 I don't know if you noticed that Ms. Alston
21 and Mr. Filbeck sat with Kayla on Tuesday and Ms. Alston
22 yesterday, so they certainly feel responsible for what
23 happened. The only person responsible for what happened
24 to Kayla that night is seated right over there, so I ask
25 you to hold him responsible. Hold him responsible for

1 when he raped Kayla |. Find him guilty of criminal
2 sexual conduct in the third degree.

3 Thank you.

4 THE COURT: Mr. Smiley?

5 MR. SMILEY: Ms. Hensley is going to deliver
6 the close, Your Honor.

7 THE COURT: Okay. All right.

8 MS. HENSLEY: Thank you, Your Honor.

9 May it please the Court: Mr. Smiley, Mr.
10 Evans, Ms. Baldwin; good morning, ladies and gentlemen.
11 You haven't heard much from me this week, and as
12 Mr. Smiley told you when we started this case, we've been
13 trying cases together for about 18 years, but we're not
14 partners. We don't work together. Just try cases
15 together. We've been friends for a long time, so I come
16 to the case a lot like y'all come to the case. I come to
17 the case without any knowledge of the witnesses or the
18 facts, and for that reason, I'm going to talk to you
19 about the way that I saw the evidence because I think it
20 was a lot of the same way that you saw the evidence.

21 I think it's important to keep in mind -- I
22 don't think that we talked a lot about it during the
23 case, and the judge will charge you on the law, but I
24 think it's important to keep in mind what Mr. Evans told
25 you what this case is about, and this case isn't about --

1 this case is about what the defendant knew or should have
2 known. And I think that we heard some of that stuff from
3 the witnesses, and it was interesting to me, and I don't
4 know if it was -- if y'all thought about it this way, but
5 we didn't hear a lot of things from the witnesses that
6 the State had to tell you. We didn't hear -- there were
7 a lot of things that the State would have chosen to pick
8 and choose and let you use your imagination, and that's
9 not what a jury trial is about.

10 A jury trial is about what the State can
11 prove. Mr. Middleton has nothing to prove. The judge
12 will tell you that Mr. Middleton comes to the State
13 innocent and remains innocent unless the State proves
14 their case, and I would submit to you they proved very
15 little. We heard from Mr. Rumsey about the key, and
16 Stewart admits that he lied to get the key, but he lied
17 to get the key to help Kayla, and I think you've got to
18 look at each witness and what -- and I think the judge
19 will tell you, and judge their credibility, their
20 believability, and something you do every day, just like
21 Judge Dennis told us in jury qual when you got the e-mail
22 about the millions of dollars or whatever.

23 You know when people are credible, and I
24 think you got to judge Yolanda Alston and Jimmie
25 Filbeck's testimony through those glasses of credibility,

1 because I think, as Mr. Evans says, they failed some
2 responsibility, and I think their testimony is tainted in
3 that way.

4 Yolanda Alston told you -- well, Yolanda told
5 you she went up to the room with Kayla before she went
6 back to the party, and Kayla had a drink in the room.
7 That was before she thought Kayla needed to go to the
8 room at 8:00. About 8:00 Kayla went to her room. We
9 know that Stewart wasn't at the party at that time. She
10 went to the room with Jimmie, and I think it was
11 interesting -- I don't know if y'all knew this, but it
12 wasn't until Mr. Delis testified and Mr. Smiley
13 cross-examined him that I even realized it was a
14 two-bedroom room. I thought the whole time, hearing from
15 Mr. Rumsey, hearing from Kayla, hearing from Yolanda
16 Alston, and hearing from Jimmie that it was a hotel room
17 where you walked in and there was a bed, so it wasn't
18 until Mr. Smiley asked Mr. Delis to describe the room
19 that I realized that the bedroom was back in another
20 room. Maybe y'all knew that, or maybe you didn't, but I
21 thought it was interesting that it was the fifth witness
22 before the State gave us that information.

23 This case is about whether Stewart Middleton
24 knew or should have known that Ms. |. was mentally
25 incapacitated, meaning unable to evaluate or control her

1 conduct, and I think we get a lot of good information
2 about that from Joye McElroy. Even though the witness
3 that they called from the hospital was the last witness
4 who saw her at 7:00 in the morning, we didn't hear from
5 any witness who evaluated her at 12:35 p.m., but we know
6 from the State's Exhibit 8, the doctor's records, that at
7 12:35 p.m., Kayla |. was certainly able to be
8 evaluated and control her conduct.

9 She knew the name of her family physician.
10 She knew that she didn't have any allergies, what drugs
11 she took, what surgeries she had, the date of her last
12 menstrual period. She knew all of that stuff at 12:35
13 and was able to communicate. Remember, Mr. Smiley asked
14 Joye McElroy about the Glasgow coma score, and she got 1
15 to 100 percent on that. She was alert, oriented. She
16 knew the time and date. She knew where she was. She was
17 able to communicate. She certainly was not physically
18 helpless, and while Mr. Evans submits to you there is
19 lots of evidence that she was unconscious, asleep, or
20 unable to communicate consent, I heard none; no evidence
21 that she was unable to communicate, certainly no evidence
22 that she was unconscious, certainly no evidence that she
23 was asleep, and certainly lots of evidence that you'll
24 have back there that she was able to communicate, that
25 she knew what was going on, that she knew all of these

1 things, and said them.

2 In fact, she said them to Officer Johnson.
3 She said to Officer Johnson, I have not been sexually
4 assaulted. Not once, not twice, three or four times.
5 That's the reason they didn't call him, not because he
6 didn't add anything. He doesn't add anything to their
7 case, certainly, because they want you to guess. They
8 want you to fill in the blanks, and I want to talk about
9 some things that they don't give you, okay? And I made a
10 little list. All the things that they didn't do, all the
11 witnesses they didn't bring, and all the things that they
12 didn't show.

13 First: We know there wasn't DNA, right?
14 There wasn't any DNA found. Now, they did the
15 fingernails. They sent the clothes to SLED, but they
16 didn't get anything. They didn't take any pictures. We
17 know from the key log that the North Charleston police
18 officer went up to the room. No pictures were taken of
19 the room. No evidence was collected. They talked about
20 how big the cups were, but they didn't bring you one.
21 They didn't take a picture of it. They didn't take a
22 picture of the vodka bottle. They didn't bring you the
23 vodka bottle. They didn't even take a picture of the
24 room. They didn't take a picture of the hotel. They
25 didn't tell you anything about that because they want you

1 to guess and because they want you to assume.

2 I thought it was interesting when Mr. Smiley
3 showed up the pictures of Ms. | 's injuries, and the
4 very first picture, Dr. Gill-Hopple couldn't even tell
5 what it was. That's why they didn't show you the
6 pictures. There wasn't anything to see. They didn't
7 show you her dress or tights that they collected. We
8 don't know if there was an ice bucket in the room. They
9 want you to guess that she drank a glass half filled with
10 vodka and half filled with Sprite.

11 I will submit to you that doesn't make any
12 sense. You check into the hotel. You get your ice
13 bucket. You go out to the vending machine. You fill it
14 up with ice. You come back and fill up your little glass
15 with ice. I'll submit to you that's what happened, but
16 we don't know because they didn't tell you, and it's
17 their job to prove their case, not our job.

18 They didn't bring you any nurse who saw her
19 that night. They didn't bring an officer who went to the
20 room who could have described for you what he saw in the
21 room. They didn't bring you any EMS technician. They
22 didn't bring you Jimmie's wife, and I'll submit to you
23 that there was a reason for that too, because we know
24 from Stewart Middleton's testimony that Jimmie's wife
25 wasn't happy and Jimmie told you that, so that

1 corroborates what Stewart said when he talked to
2 Detective Bailey.

3 I want to talk a little bit about the key log
4 because I think it's important. Mr. Evans would have you
5 believe that Stewart couldn't have gone to his car to get
6 the blunt because the key wasn't used. I would submit to
7 you that, first, if he didn't go to his car to get the
8 blunt, how did the marijuana get in the room? Second, I
9 don't think you would admit to smoking marijuana to a
10 police officer if you weren't telling the truth; and,
11 third, Mr. Smiley told you how you can get in the room.
12 You can get in the room two ways: Use the key or knock,
13 and I would submit to you, when Stewart came back with
14 the blunt, he knocked on the door and Kayla opened the
15 door.

16 Let's talk about what Stewart says Kayla is
17 talking about. We know that she wasn't physically
18 helpless or asleep or unconscious because when Jimmie and
19 his wife and Stewart opened the door at 10:21, she jumped
20 out of the bed, came out of the room, or at least to the
21 foot of the bed where they could see her, that back room,
22 and she was nude. We know that. So she certainly isn't
23 physically helpless.

24 Stewart says that she came out in the hall
25 when the door closed and she was in a towel. I would

1 submit to you that that proves that she was capable of
2 evaluating and controlling her conduct, and what is she
3 saying? I'm so sorry, Jimmie. I'm sorry you saw me like
4 this, that your wife saw me like this.

5 What does Stewart say she says when they go
6 back in the room? The party was horrible. People are
7 going to be talking about how I was drunk. People are
8 going to say I was naked in front of Jimmie's wife.
9 She's upset. She's communicating. They have -- they
10 have consensual sex. At what time during that
11 conversation should he have known she was unable to
12 evaluate or control her conduct? Her conduct makes
13 perfect sense, considering the facts.

14 I think we've got to talk a little bit about
15 credibility and credibility of the witnesses. I think
16 Jimmie did his best to tell the truth. I think his truth
17 is kind of tainted by his willingness or desire to help
18 Kayla, but remember at the very end when Mr. Smiley was
19 asking Jimmie about, But you have hung out with Stewart
20 socially? No, I don't think I have. Well, what about
21 that camping trip? Oh, yeah. We did go camping together
22 once.

23 I think the most important thing in this case
24 is when the judge charges you on the law, I believe he'll
25 say something to you like reasonable doubt is the kind of

1 doubt that would cause a reasonable person to hesitate to
2 act, and in law school, through 18 years of practice,
3 I've always had a little problem with what does that
4 mean? What would make a reasonable person hesitate to
5 act? What kind of decisions do we make in everyday life
6 that would cause us to hesitate to act?

7 And I think it's best analyzed, or at least
8 it makes sense to me when I think about it like this: I
9 had a mammogram recently, and in the mammogram, they said
10 there was something abnormal and I needed to come back to
11 the doctor and talk to the doctor about making decisions
12 about what we should do from there.

13 So if this was me coming back to the doctor,
14 and this is what the doctor had to tell me that he had
15 found, well, he doesn't have any, you know, DNA. He
16 doesn't have any objective evidence of any problem:

17 We certainly don't have any pictures that we
18 can look at and figure out what happened. We didn't, you
19 know, collect any evidence, Laree. I'm sorry.

20 I didn't -- I'm not going to be able to show
21 you the glass or the liquor bottle or the ice bucket or
22 even what the room looked like. I'm sorry. I'm not
23 going to show you the dress or tights or underwear. I'm
24 not going to let you talk to the EMS tech. I'm not going
25 to let you hear from the officer that went in the room.

1 I'm not going to let you talk to Jimmie's wife. I'm
2 going to leave all that out, but I think you should go
3 ahead and have the mastectomy.

4 Would you hesitate to act? Would you be
5 firmly convinced of his diagnosis? I submit to you that
6 you would not, and I submit to you that in this case, the
7 evidence fails, and in this case the only true verdict is
8 not guilty.

9 Thank you.

10 THE COURT: Solicitor?

11 MR. EVANS: May it please the Court, Your
12 Honor:

13 Ladies and gentlemen: You obviously heard
14 from me, so I'm not going to be too verbose here, but I
15 do want to briefly address some of the defense points.
16 They made a big deal about Glasgow coma score. It's a
17 code, coma score, whether you're comatose or not.
18 Consciousness is not a legal standard under the CSC
19 statutes, not whether she was asleep or passed out. I
20 will submit to you the evidence shows that she probably
21 was. The legal standard is whether she was rendered
22 temporarily incapable of appraising or controlling his or
23 her own conduct, her own conduct.

24 Now, you can be incredibly intoxicated and
25 still be functioning with your motor skills or saying

1 things that automatically you remember from your life.
2 That doesn't mean you're capable of controlling or
3 appraising your own conduct, and I submit to you that
4 because of all the evidence of gross intoxication,
5 including that tox screen -- excuse me, the blood results
6 from three hours later where she's still in a near toxic
7 range of alcohol consumption, she was incapable of
8 appraising or controlling her conduct.

9 The defense talked a lot about what we didn't
10 present to you, and I'm going to explain, there are lots
11 of reasons why we presented -- why we didn't present some
12 of the evidence, the DNA evidence in this case. He
13 admitted he had sex with her. DNA is not going to prove
14 anything. No pictures or evidence from the first night
15 of the investigation.

16 I'm not going to sit here and make excuses
17 for the investigation the night it happened. I think it
18 was terrible. I think Detective Bailey would admit that
19 it was done by the standards of the North Charleston
20 police department, but I think you saw Officer Johnson at
21 the time showed up, already made up his mind about what
22 happened, and he wasn't going to be doing any
23 investigation to change his mind.

24 I wish we had pictures that night. I wished
25 they had sent crime scene in there. I wish they had

1 preserved everything. I wish former Officer Johnson had
2 done his job that night, but he didn't, so when Detective
3 Bailey got the case four days later, she had to start
4 cleaning up his mess to begin with and then investigating
5 the case. They also made a point about the key log, and
6 if the defendant hadn't gone and gotten marijuana, where
7 is the evidence in the room? I don't think he smoked
8 marijuana, I think he brought it with him, just like the
9 condom, to the party.

10 He told Detective Bailey when he left the
11 room, he took one of the victim's room keys, one of
12 Kayla's room keys, so he admitted he was using the room
13 key. It's not in the key log anywhere because he never
14 left the room until after he had raped her and he was
15 escaping.

16 Ladies and gentlemen: Ms. Hensley also
17 touched on the law of reasonable doubt. I submit to you
18 that the law of reasonable doubt is not as complicated as
19 hesitate to act. It's firmly convinced, whether you're
20 firmly convinced of the defendant's guilt, and I submit
21 to you after you've reviewed all the evidence in this
22 case and talked about all the witness's testimony y'all
23 will be firmly convinced that the defendant had a plan.
24 Once he heard that Kayla was hammered at the party, once
25 he saw for himself how drunk she was, once he saw she was

1 naked and easy to take advantage of when he went
2 downstairs and he lied to Ms. Rumsey about being her
3 boyfriend when he went back upstairs and he raped her,
4 and I'm confident you each will be firmly convinced of
5 the defendant's guilt, and I ask you to bring back a
6 verdict of guilty.

7 Thank you.

8 THE COURT: All right. Mr. Foreman, ladies
9 and gentlemen of the jury: I will give you a copy of
10 these instructions in written form, and during the
11 deliberations, you may refer to the instructions to guide
12 your decision-making. You must consider the instructions
13 as a whole and not follow some and ignore others.

14 Mr. Foreman, please return the instructions
15 that the Court after you have reached a verdict.

16 I charge you Mr. Foreman, members of the
17 jury, the fact that the defendant elects not to testify
18 on his own behalf cannot and must not be considered
19 against him under any circumstances or any matter
20 whatsoever. The decision of the defendant not to take
21 the witness stand and testify in his own behalf does not
22 create any inference against him, and I tell you that you
23 must not permit that fact to weigh, even in the slightest
24 degree, against the defendant. You should not admit this
25 fact into discussions or deliberations about the issues

1 in the case.

2 The defendant has pled not guilty to these
3 indictments which places the burden on the State to prove
4 the defendant guilty. A person charged with committing a
5 criminal offense in South Carolina is never required to
6 prove himself innocent. I charge you that it is a vital,
7 important rule of the law that the defendant in a
8 criminal trial, no matter what the seriousness of the
9 charge may be, must always be presumed to be innocent
10 until his guilt has been proven beyond a reasonable
11 doubt.

12 This presumption of innocence remains with
13 the defendant at all times, from the moment he appears in
14 this court, throughout the trial, and until you, the
15 jury, reach a verdict of guilt beyond a reasonable doubt
16 based on the testimony and evidence presented.

17 The presumption of innocence is a substantial
18 right to which every defendant is entitled, unless and
19 until you reach a verdict of guilty beyond a reasonable
20 doubt. If you, the jury, do not find the defendant
21 guilty beyond a reasonable doubt, it is your duty to
22 acquit the defendant.

23 What is reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to act. The State has the

1 burden of proving the defendant guilty beyond a
2 reasonable doubt beyond a reasonable doubt. Some of you
3 may have served as jurors in civil cases where you were
4 told that it is only necessary to prove that a fact is
5 more likely true than not, such as by the greater weight
6 or preponderance of the evidence.

7 In criminal cases, the State's proof must be
8 more powerful than that. It must be beyond a reasonable
9 doubt. Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt.
11 There are very few things in this world that we know with
12 absolute certainty, and in criminal cases, the law does
13 not require proof that overcomes every possible doubt.

14 If, based on your consideration of the
15 evidence, you are firmly convinced the defendant is
16 guilty of the crime charged, you must find the defendant
17 guilty. If, on the other hand, you think there is a real
18 possibility that the defendant is not guilty, you must
19 give the defendant the benefit of the doubt and find him
20 not guilty.

21 The same constitutional laws which designate
22 and make you the finders of the fact make me the sole
23 instructor of the law. It is my duty to charge you the
24 law applicable to this case, and it is your duty as
25 jurors to accept and apply the law as I now state it to

1 you.

2 The lawyers are not the instructors of the
3 law. You must accept the law and apply the law exactly
4 as I state it to you. You must not base your
5 decisionmaking on your idea of what the law is or what
6 you think the law should be. Under our constitution and
7 code of laws, only you, the jury, can make findings of
8 fact in this case. I am not permitted to indicate to you
9 how I may feel about the testimony and evidence which has
10 been presented.

11 Throughout the trial, it has been my
12 intention to be fair and impartial toward each of the
13 parties involved. Necessarily, you must determine the
14 credibility of the witnesses who have testified in this
15 case. Credibility simply means believability. It is
16 your duty as jurors to analyze and to evaluate the
17 evidence and determine which evidence convinces you of
18 its truth.

19 As you decide whether or not to believe a
20 witness's testimony about a particular matter, you may
21 consider the following: The manner and appearance of the
22 witness while on the witness stand. Was he or she
23 straightforward or hesitant in answering? The testimony
24 of the witness: Was it consistent or inconsistent? How
25 the witness came to know the facts that he or she

1 testified to? Was the witness present during this
2 incident or did the witness happen on the scene after the
3 incident occurred? The reason the witness would want to
4 give testimony, which could help or hurt one side or the
5 other? Has the witness exhibited to you any interest,
6 bias, prejudice, or other motive in this case?

7 Thus, you may consider whether a particular
8 witness may gain some reward, payment, personal
9 advantage, or vindication through his or her testimony.
10 The strength of the testimony of the witness: Was the
11 testimony of the witness strengthened or weakened by
12 other testimony or evidence? The duration and length of
13 time between the incidents and when they were reported:
14 Would the duration and length of time weaken or
15 strengthen the witness's memory of the incidents?

16 Prior statements: Were prior statements made
17 by the witness consistent or inconsistent with the
18 witness's testimony? In determining the believability of
19 the witnesses who have testified in this case, you may
20 believe one witness over several witnesses or several
21 witnesses over one witness. You may believe a part of
22 the testimony of a witness and reject the remaining part
23 of the testimony of that same witness. You may believe
24 the testimony of a witness in its entirety or reject the
25 testimony of a witness in its entirety.

1 Of course, you do not determine the truth by
2 merely counting the number of witnesses presented by each
3 side. As finders of the facts, this does not mean you
4 are at liberty to fabricate facts. You must determine
5 facts based on evidence you hear in the courtroom alone.
6 You may not draw conclusions from facts that do not exist
7 or are not supported by any evidence at all. You may,
8 however, draw reasonable conclusions from facts you find
9 are supported by evidence presented in the courtroom.

10 What is evidence and what is not evidence for
11 your consideration? Evidence or lack of evidence from
12 which you are to decide the facts includes the following:
13 The sworn testimony of the witnesses, both on direct and
14 cross-examination, regardless of which side called the
15 witness, the exhibits that have been received into
16 evidence by the Court, and any facts agreed or stipulated
17 to by all the lawyers.

18 The following things are not evidence, and
19 you may not consider them in deciding the facts:
20 Arguments and statements by the lawyers are not evidence.
21 The lawyers are not witnesses. Their opening statements,
22 closing arguments, and other statements are intended to
23 help you to interpret the evidence but are not evidence.
24 If the facts, as you remember them, differ from the
25 lawyers' statements, your memory controls. Questions and

1 objections by the lawyers are not evidence. Lawyers have
2 a duty to their client to make objections when they
3 believe a question is improper under the rules of
4 evidence.

5 You should not allow any objections or the
6 Court's ruling on the objections to influence you.
7 Testimony that has been stricken or that you have been
8 instructed to disregard is not evidence and must not be
9 considered. Anything that you may have seen on
10 television, read in the newspaper or on the Internet or
11 heard from others when court is not in session is not
12 evidence. You should base your decision solely on the
13 sworn testimony of the witnesses, exhibits received into
14 evidence by the Court, and any facts agreed or stipulated
15 to by the attorneys.

16 The fact that the defendant was arrested,
17 charged, and indicted in this case is not evidence and
18 cannot be considered as evidence of guilt, nor does it
19 create any presumption or inference of guilt. The
20 indictment is simply the formal written instrument which
21 contains the charges made against the defendant.

22 Direct and circumstantial evidence: There
23 are two types of evidence which are generally presented
24 during a trial, direct evidence and circumstantial
25 evidence. Direct evidence directly proves the existence

1 of a fact and does not require deduction. Circumstantial
2 evidence is proof of a chain of facts and circumstances
3 indicating the existence of a fact.

4 Crimes may be proven by circumstantial
5 evidence. The law makes no distinction between the
6 weight or value to be given to either direct or
7 circumstantial evidence; however, to the extent the State
8 relies on circumstantial evidence, all of the
9 circumstances must be consistent with each other, and,
10 when taken together, point conclusively to the guilt of
11 the accused beyond a reasonable doubt.

12 If these circumstances merely portray the
13 defendant's behavior as suspicious, the proof has failed.
14 The State has the burden of proving the defendant guilty
15 beyond a reasonable doubt. This burden rests with the
16 State, regardless of whether the State relies on direct
17 or circumstantial evidence or some combination of the
18 two.

19 Third criminal sexual conduct: In order to
20 prove third degree criminal sexual conduct, the State
21 must prove beyond a reasonable doubt that the defendant
22 engaged in a sexual battery with the victim. A sexual
23 battery is sexual intercourse or any intrusion, however
24 slight, of any part of a person's body or of any object
25 into the genital or anal openings of another person's

1 body except when the intrusion is accomplished by
2 medically recognized treatment or diagnostic purposes.

3 If you find that a sexual battery did occur,
4 you must then decide whether the State has proved beyond
5 a reasonable doubt that the victim was mentally
6 incapacitated or physically helpless. Mental
7 incapacitation means that the victim was rendered
8 temporarily unable to evaluate or control his or her
9 conduct. This condition may be caused by illness,
10 defect, influence of substances, or some other cause.
11 Physical helplessness means the defendant was
12 unconscious, asleep, or for any other reason physically
13 unable to communicate, consent to sexual battery.

14 If you determine the victim was mentally
15 incapacitated or physically helpless, then must decide
16 whether the State has proved beyond a reasonable doubt
17 that the defendant knew or had reason to know that the
18 victim was mentally incapacitated or physically helpless
19 and that aggravated force or aggravated coercion was not
20 used to accomplish the sexual battery.

21 In determining the innocence or guilt of the
22 defendant, you cannot consider any possible penalty for
23 any particular crime. The punishment for a crime is a
24 matter for me to determine and should never be considered
25 by you in any way whatsoever in arriving at an impartial

1 verdict as to the guilt or innocence of the defendant.

2 The rules of evidence ordinarily do not
3 permit witnesses to testify to opinions and conclusions.
4 An exception to this rule experts of witnesses called as
5 expert witnesses. A witness who by education, experience
6 has become expert in some art, science, profession, or
7 calling may state an opinion as to a relevant and
8 material matter in which the witness claims to be expert
9 and may also state the reasons for the opinion.

10 You should consider any expert opinion
11 received in evidence in this case like any other
12 evidence. Give it the weight you think it deserves. If
13 you decide an opinion of the expert witness is not based
14 on sufficient education and experience or if you conclude
15 that the reasons given in support of the opinion are not
16 sound or the opinion is outweighed by any other evidence,
17 you may disregard the opinion entirely. An expert
18 witness's testimony is to be given no greater weight than
19 any other witness simply because the witness has
20 testified.

21 You have been selected as fair and impartial
22 jurors sworn to impartially try and determine the facts
23 of this case, and when you comply with your oath to do
24 so, then no one will have a right to criticize your
25 verdict, and you will have fully discharged your duty as

1 jurors. You are to decide this case according to the
2 testimony that you have heard from the lips of the sworn
3 witnesses, along with other evidence introduced.

4 I charge you that as jurors you must make
5 your decision in this case without bias and without
6 prejudice to any party. You cannot allow yourself to be
7 governed by sympathy, prejudice, passion, public opinion,
8 or any other arbitrary factor.

9 Both the State and the defendant have the
10 right to expect that each one of you will carefully and
11 impartially consider all of the evidence in this case and
12 that you will follow the law as I have explained it to
13 you. Nothing that I may have said or done during the
14 course of this trial has been in any way intended to
15 express or suggest a view of this case or an opinion as
16 to the facts, the weight of the evidence, or the
17 credibility of the witnesses.

18 If you believe any of my actions or words
19 have indicated otherwise, you must disregard such and
20 form your own view of this case or your own opinion as to
21 the facts, the weight of the evidence, or the credibility
22 of the witnesses.

23 Mr. Foreman, ladies and gentlemen of the
24 jury: I have prepared a verdict form, and it says State
25 of South Carolina versus Stewart Jerome Middleton. Case

1 number, as to indictment number 2014-GS-10-2802, criminal
2 sexual conduct, third: We, the jury, unanimously find
3 the defendant not guilty/guilty of third degree criminal
4 sexual conduct, place for the foreman to sign and date.

5 As the verdict form says, your verdict has to
6 be unanimous. I will tell you it's a collective
7 reasoning process. All 12 of you, I would ask you to
8 listen to each other's opinions, view the evidence, study
9 the evidence, and talk about the case, and reach a fair
10 and just verdict based upon your view of the evidence and
11 the credibility of all the witnesses in the case.

12 Mr. Foreman, I'm going to ask you to go to
13 the jury room. Please do not begin your deliberations
14 until the bailiff brings the charge book that I just read
15 from, the verdict form, which is on the inside cover of
16 the charge book, all the evidence has been presented, and
17 he instructs you to begin your deliberations.

18 Now, it is now 11:15. Before you begin your
19 deliberations, I would ask you, do you -- I want to ask
20 you, do you want to try to go get a bite to eat now or do
21 you want me to try to order something in for you? It
22 will take about an hour and a half to two hours to get it
23 into the courtroom. Which do you prefer?

24 By a show of hands? Who would like to go now
25 before you begin deliberations, or lunch now?

1 Mr. Foreman, what is your opinion? I'm leaving it to
2 you. Who wants to go now and grab a bite to eat and
3 begin deliberations?

4 THE FOREMAN: We would like to order.

5 THE COURT: Okay. Majority would like to
6 order. The clerk is going to come in and take your
7 order, and, as I said, it will take about an hour, hour
8 and a half, maybe two, to get the food here.

9 And I apologize. I should have done that
10 first thing this morning, but it just slipped my mind.
11 It's my fault. Don't blame it on the clerk, okay? I
12 apologize. All right.

13 Mr. Foreman, if you'll go to the jury room
14 and begin your deliberations when the bailiff brings you
15 the evidence, and the two alternates, will you keep your
16 seats, please.

17 (In open court, jury not present.)

18 THE COURT: Any exceptions to the charge,
19 from the State?

20 MR. EVANS: None from the State, Your Honor.

21 THE COURT: Any from the defendant?

22 MR. SMILEY: No, sir.

23 THE COURT: All right. As soon as I get a
24 bailiff, if the parties will come forward, look at the
25 evidence that's put in the record.

1 MR. SMILEY: Yes, sir. There's one exhibit
2 that they're going to have to watch in the courtroom, and
3 that's the video of Mr. Middleton. There's a part at the
4 very beginning that we mute out.

5 MR. EVANS: We redacted a portion of his
6 statement.

7 THE COURT: Okay. Well, I don't know if
8 they're going to have to do it on the computer.

9 MR. SMILEY: As long as they don't hear that.

10 THE COURT: First of all, they're going to
11 have to request to view it.

12 (Whereupon, at 11:19 a.m., the jury begins
13 deliberations.)

14 (12:27 p.m., in open court, jury not
15 present.)

16 THE COURT: We'll mark this as Court's
17 Exhibit 2.

18 (Court's Exhibit 2 marked for
19 identification.)

20 Anything from the State before we bring the
21 jury?

22 MR. EVANS: The victim is downstairs. She's
23 coming up right now.

24 THE COURT: Anything from the defense?

25 MR. SMILEY: No, sir.

1 THE COURT: Okay.

2 (1:29 p.m., in open court, jury present.)

3 I understand y'all have reached a verdict; is
4 that correct?

5 THE FOREMAN: Yes, we have, Your Honor.

6 THE COURT: Will you pass the verdict form to
7 the bailiff, please. Thank you so very much.

8 Mr. Foreman, I have filled out your verdict
9 on the verdict form on the back of the indictment, and
10 I'm going to give this to the bailiff and ask you to
11 please sign where it says foreperson, please. You don't
12 need to publish it, but you just need to sign the verdict
13 form. Do you have a pen?

14 (Foreman complies.)

15 Thank you, sir. Give it to the clerk to
16 publish the verdict, please.

17 THE CLERK: The State of South Carolina
18 versus Stewart Jerome Middleton: Case number
19 2014-GS-10-2602, as indictment number 2014-GS-10-2602,
20 sexual conduct, third degree: We, the jury, unanimously
21 find the defendant guilty of third degree criminal sexual
22 conduct, signed by the foreperson, dated October 26,
23 2017.

24 THE COURT: Do you have a sentence sheet?

25 MR. EVANS: I do, Your Honor. May I

1 approach?

2 THE COURT: Yes, sir.

3 MR. EVANS: Your Honor, we also would be
4 asking for a permanent restraining order.

5 THE COURT: Just give me the sentence sheet,
6 okay, please?

7 Any motion from the defendant?

8 MR. SMILEY: I would ask the jury be polled.

9 THE COURT: All right. Please poll the jury.

10 THE CLERK: Yes, sir.

11 When I call your name and your juror number,
12 I am going to ask you to stand. I'll ask you two
13 questions. I need you to answer verbally yes or not to
14 both of them. The question will be: Is this your
15 verdict, and then the second question will be, is this
16 still your verdict?

17 We'll do that until all the jurors are
18 polled. We'll start with the foreperson.

19 (Whereupon, the jury was polled, and all
20 jurors indicated their agreement with the verdict.)

21 THE CLERK: Let the report reflect all jurors
22 have been polled and the verdict stands.

23 THE COURT: Do you want any post-trial
24 motions?

25 MR. SMILEY: I would renew the motion I made

1 for directed verdict at this point in time, Your Honor.
2 Other than that, I have no other motions.

3 THE COURT: Okay. That's denied. Okay. I
4 guess, Solicitor, I'm going to give this back to you. If
5 you'll get the defense attorney and yourself to sign the
6 sentencing sheet, I'd appreciate it.

7 MR. EVANS: Yes, sir. May I approach?

8 THE COURT: And I'll hear from both sides on
9 sentencing.

10 MR. EVANS: May it please the Court: Your
11 Honor, right now regarding sentencing?

12 THE COURT: As soon as I get the sentencing
13 sheet. Why don't y'all just calm down. Take it easy.

14 All right. I'll be glad to hear from the
15 State and hear from anybody you would like me to hear
16 from as far as sentence is concerned.

17 MR. EVANS: Yes, sir. Thank you, Your Honor.
18 May it please the Court: I won't go too far into the
19 facts. I understand Your Honor has been here for four
20 days. You know the facts of the case pretty well.

21 I do want to point out I think, you know, the
22 defendant's actions in terms of going down to the front
23 desk and essentially lying about why he was there --

24 THE COURT: I heard the facts. Talk to me
25 about sentencing, please.

1 MR. EVANS: Your Honor, I believe a
2 significant active prison sentence is warranted in this
3 case because of his actions. I believe that would be a
4 reasonable and fair sentence in this case. I think he
5 needs to do some prison time on top of the sex offender
6 registry he's going to have to do.

7 THE COURT: What kind of a prior record does
8 he have?

9 MR. EVANS: Your Honor, it's, frankly,
10 minimal, but he does have a 1995 possession of marijuana
11 and a 2000 driving under suspension conviction. Ms.
12 | does not wish to address the Court.

13 THE COURT: Does the victim want to address
14 the Court on sentencing?

15 MR. EVANS: She does not, Your Honor.
16 Obviously, this has been a very trying ordeal for her.
17 She does not wish to address the Court at this time, but
18 I know she's glad to have this behind her finally.

19 THE COURT: Does she want anybody to address
20 the Court on her behalf, her mother or her sister or
21 anyone else?

22 MR. EVANS: She does not; we are asking for a
23 permanent restraining order, though, as part of the
24 resolution of this.

25 THE COURT: All right. Anything else from

1 the State?

2 MR. EVANS: Nothing further from the State,
3 Your Honor.

4 THE COURT: I'll be glad to hear from the
5 defendant.

6 MR. SMILEY: Yes, sir.

7 Your Honor, he's had his family's support.
8 His wife is here, his mother is here, he's got a whole
9 lot of family, his brother -- I've known this family,
10 Your Honor, as a family, for 15 years.

11 I became friends with Shaun Middleton, his
12 younger brother, first, and became friends with every
13 member of the family. I have been to their home. I took
14 this case because I knew Stewart, and I believed him,
15 Your Honor. Stewart has always worked. He's a hard
16 worker. He worked at SKF for eight years, Your Honor,
17 and was terminated because of this arrest.

18 He's had a hard time with employment, and, as
19 you know from pretrial, Your Honor, we had been offered
20 probation, and the thing that was the kicker for
21 Mr. Middleton was the sex registry, being a lifetime sex
22 registry, but since he's been terminated he's been having
23 a hard time getting better employment because of the
24 arrest.

25 He admitted that he committed adultery, and,

1 quite frankly, as I understand the State disagrees with
2 all that, but he admitted that he had sex with her. I
3 mean, he did not say no. He could have called me. He
4 went in thinking he had not done something wrong. He's
5 quite clear the jury has spoken, Your Honor. I'm not
6 trying to make light of that.

7 He has no significant prior record. The sex
8 offender registry is going to be something that he's
9 going to have to comply with for the rest of his life.
10 I'd ask you to consider a probationary sentence in this
11 case, Your Honor, as he has always been a good,
12 productive member of society. He's made a mistake.
13 There's no doubt about that, Your Honor. He only did one
14 night in jail before he was released:

15 THE COURT: Mr. Middleton, anything you would
16 like to say to the Court before I impose sentence? Sir,
17 I'll be glad to hear from you.

18 I'm sorry. I didn't mean to cut you off.

19 MR. SMILEY: I could go on and on, but I
20 won't.

21 THE COURT: Mr. Middleton, anything you would
22 like to say to the Court?

23 THE DEFENDANT: Yes, sir, Your Honor. Yes, I
24 have made a mistake. I have committed adultery, but I
25 did not rape her, but for the four years up to this has

1 been an uproar in my life. I lost my wife. I lost my
2 home. I lost my job, kids; all this, and I'm going to
3 jail, so I don't know how this happened. I'm going to
4 jail. I don't have my family or my mother or my kids or
5 anything.

6 THE COURT: Mr. Middleton, I'll be glad to
7 hear any member of your family. If they would like to
8 address the Court, I'll be glad to hear them, if anybody
9 would like to address the Court.

10 If you do, come around please, ma'am.

11 THE WITNESS: My name is Nebra Singleton.
12 I'm the mother of Stewart Middleton. That's my daughter,
13 Tearra Middleton. I couldn't ask for a better son or a
14 perfect daddy. The only thing I can say is, yeah, he is
15 guilty of an extramarital affair, but rape? Not him, not
16 him. Your Honor, the only thing I ask you do is please
17 don't take him away from my grandkids.

18 THE COURT: Thank you so very much. Anyone
19 else from the family like to speak?

20 MR. SMILEY: His brother Shaun would like to
21 address you.

22 THE COURT: Mr. Middleton, if you could come
23 up, please. What is your full name?

24 THE WITNESS: Shaun Middleton.. Stewart
25 Middleton is my older brother.

1 My brother is guilty of a lot of things, but
2 rape isn't one of them, and he was willing to go through
3 this trial and take the chance because he's a good
4 father. He loves his kids, and he puts his kids first,
5 and one thing I will always remember he said through
6 this: If I get found guilty, or if I take this plea
7 they're offering and I become a sex registry, I can't go
8 to my daughter's school. I can't participate with my
9 son. I can't do the things that he do, so I'll take that
10 chance and go out there because his kids mean everything
11 to him, everything.

12 And I can stand up here, and I can say that
13 about him, that he is a very, very outstanding father.
14 He made poor decisions. He was a horrible husband that
15 night, but he's a good person, he really is.

16 THE COURT: Thank you so very much.

17 MR. SMILEY: That's all we have, Your Honor.

18 THE COURT: Okay. Thank you.

19 All right, Mr. Middleton: You're sentenced
20 to the state department of corrections for a period of
21 six years. That's suspended upon the service of six
22 months, put you on probation for five years. Condition
23 of probation is you complete sex abuse program and no
24 contact with the victim or her family in any manner
25 whatsoever. Do you understand?

1 The probation will be tolled while you're in
2 jail, so when you get out, you're going to have five
3 years probation, and you're going to have five-and-a-half
4 years hanging over your head, do you understand? Do you
5 understand?

6 You're going to have five-and-a-half years
7 hanging over your head. I gave you six years. You're
8 going to serve six months active, and then you're going
9 to be on probation, so if you violate probation, you can
10 go to jail for five-and-a-half years.

11 Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Thank you so very
14 much.

15 MR. EVANS: Your Honor, I also have the
16 permanent restraining order, if you would be inclined to
17 grant that as well.

18 THE COURT: I'm not sure I can put him on a
19 permanent restraining order.

20 MR. EVANS: There's a statute, 16-30-1900
21 that is a permanent restraining order. I can get you a
22 copy of the statute as well, but that allows you to enter
23 a permanent restraining order.

24 THE COURT: I'll make it a permanent
25 restriction, no contact with the victim in any manner

1 whatsoever, that includes e-mails, texts, phone,
2 anything, okay?

3 MR. EVANS: It's actually a separate order.
4 I have a copy, if you would like to see it.

5 THE COURT: That's fine. I'll sign the order
6 and I'll put it on the sentence sheet, permanent, okay?
7 If she's got a permanent order, I'll be happy to sign it.
8 Do you have the order?

9 MR. EVANS: Yes, sir, I do. May I approach?
10 It's the form order from the Supreme Court. Thank you,
11 Your Honor.

12 THE COURT: All right. Anything else?

13 MR. SMILEY: No, sir.

14 THE COURT: Thank y'all very much.

15 - - -

16 (Whereupon, at 1:46 p.m., the proceedings
17 were concluded.)

18 - - -

19

20

21

22

23

24

25

< Messages

Stew

Contact

Text Message
Yesterday 6:59 PM

I'm am really upset!

iMessage

I'm so sorry, I guess u
was drunk, I was drunk
and it should of never
happen..

Did u use a condom

Yeah

Delivered

WITNESSES

North Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2013043453

COURT OF GENERAL SESSIONS

May Term 2014

ARREST WARRANT NUMBER

2014A1010201012

DATE OF ARREST

February 21, 2014

ACTION OF GRAND JURY

THE STATE

vs.

STEWART JEROME MIDDLETON

DOB: [REDACTED]

B/M

TRUE BILL

Indictment for

Criminal Sexual Conduct, 3rd Degree

Foreperson of Grand Jury
Date: [Signature]

MAY 13 2014

VERDICT

Guilty

Foreperson of Petit Jury

INDICT

10/26/17

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

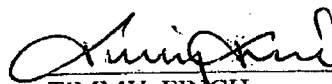
INDICTMENT

At a Court of General Sessions, convened on May 12, 2014 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct, 3rd Degree

That in Charleston County, South Carolina, on or about December 14, 2013 the Defendant, STEWART JEROME MIDDLETON, did commit a sexual battery upon the victim, Kayla I. with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless where aggravated force or aggravated coercion was not used, to wit: sexual intercourse; all in violation of Section 16-03-654, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



TIMMY FINCH
ASSISTANT SOLICITOR

COUNTY OF **CHARLESTON**

STATE VS.

STEWART JEROME MIDDLETONAKA: Stewart MiddletonRace: Black/African AmericanSex: MDOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Moncks Corner, SC 29461-8882DL# [REDACTED]SID# [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: **Criminal Sexual Conduct Third Degree**In violation of § **16-03-0654** of the S.C. Code of Laws, bearing CDR Code # **0162**☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Andrew Evans, Assistant Solicitor

SC Bar # 100605

Defendant

Attorney for Defendant

SC Bar # 06312

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed 6 years and/or to pay a fine of \$ 100; provided that upon the service of 6 days/months/years and or payment of \$ 100; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUPTotal: \$ 100 plus 20% fee: \$ 20Payment Terms: while in Probation☐ Set by SCDPPPSRecipient: [REDACTED]

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100</u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

Obtain GED ☐ while in ProbationAttend Voc. Rehab. Or Job Corp. [REDACTED]May serve W/E beginning [REDACTED]Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ 100 Beginning [REDACTED]\$ 100 Paid to Public Defender FundOther: Complete SEX

ABUSE OF POWER &
NO CONTACT WITH VICTIM
OR HER FAMILY IN ANY
MANNER WHATSOEVER
12 MONTHS

☐ Appointed PD or appointed other counsel,

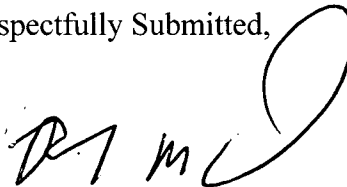
§47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Amanda HaffenderCourt Reporter: [REDACTED]Presiding Judge: [REDACTED]Judge Code: 2117Sentence Date: 10/26/17

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 24th day of May, 2019.